

## **COMMUNITY DEVELOPMENT LOAN AGREEMENT**

THIS AGREEMENT, made and entered into this first day of June, 2019, by and between the County of Buncombe (hereinafter referred to as the "County"), a body politic and corporate under the laws of the State of North Carolina, and Asheville Area Habitat for Humanity, Inc., a North Carolina non-profit corporation organized under the laws of the State of North Carolina, (hereinafter referred to as "AAHH").

### **WITNESSETH:**

WHEREAS, affordable housing is a strategic priority for the County and the County invests in suitable projects; and

WHEREAS, AAHH is the owner of certain property as set forth in Deed Book 5338, Page 92 Buncombe County Registry (herein "Property"); and

WHEREAS, AAHH is in the process of developing the aforementioned property as described in Attachment A (herein "Old Haywood Project") and has applied to the Buncombe County Board of Commissioners for funding; and

WHEREAS, on August 6, 2019, the Board of Commissioners approved AAHH's proposal for an interest free loan totaling \$680,800 to AAH to support the development of affordable housing within the County; and

WHEREAS, pursuant to the request, AAHH shall use the funds for the construction of affordable housing units in the Old Haywood Project subject to the terms of this Agreement.

NOW, THEREFORE, for valuable consideration and mutual promises set forth herein between the parties hereto, it is agreed as follows:

1. **Terms and Conditions**

- (a) Uses of funds pursuant to this Agreement are limited for the construction of affordable housing units in the Old Haywood Project up to a maximum amount of Six Hundred Eighty Thousand Eight Hundred Dollars and no/100 (\$680,800.00).
- (b) AAHH shall allow the County to carry out monitoring and evaluation activities as determined necessary by the County.
- (c) The terms of this loan is as follows:
  - 1. Principal amount of \$680,800;

2. Interest Rate of 0%;
3. The term of the loan shall be five (5) years; and
4. Repayment of the loan as follows:
  - a. Once a property is constructed and sold to a third party, the County will release the lot from AAHH's Deed of Trust; and
  - b. In exchange for the release deed, the County will receive from the new property owner a note and deed of trust in the amount of \$16,700 for units 1-24 and \$20,000 for units 25-38. The terms of the note and deed of trust is set forth in the scope of services attached as Exhibit A.

(d) The County will disburse the loan based on the following schedule:

1. AAHH shall submit requests for reimbursement of expenses to the County and the County will release funding upon approval of the request.
- (e) AAHH shall sign a Note in the original amount of \$680,800.00, AAHH shall execute a future advance deed of trust using the Property as security, and the County lien priority on the Property shall never be lower than third position.
- (f) AAHH shall comply at all terms regarding the scope of the Old Haywood Project as set forth in Attachment A of this Agreement.
- (g) AAHH shall comply with all federal, state and local laws relating to the Old Haywood Project.

## 2. **Records and Reports**

- (a) AAHH shall maintain and shall make available at reasonable times and places to the County such records and accounts, including property, personnel, and financial records, as are deemed necessary to assure a proper accounting for all project funds.
- (b) AAHH shall provide any authorized representative of the County, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the books, papers, records, and other documents relating to the affordable housing funds and the fulfillment of this Agreement for a period of three years following the completion of all close-out procedures respecting the affordable housing funds, and the final settlement and conclusion of all issues arising out of the affordable housing funds loan.
- (c) AAHH shall complete and submit an Annual Performance Report to the County due at the time of the payment, which notes accomplishments, beneficiaries,

problems encountered, changes in work schedules, unit mix and income targets, and any other information as required.

- (d) AAHH shall provide an Annual Audit Report performed in compliance with applicable County Budget circular requirements.
- (e) AAHH shall establish and maintain fiscal and accounting procedures in accordance with generally accepted accounting principles and practices.
- (f) AAHH shall not commingle accounts to an extent that prevents the accounting and auditing of the funds hereunder; provided however, AAHH may supplement the funds provided hereunder from other funding sources.
- (g) Funds provided hereunder are exclusively for the purposes of this Agreement under the terms and conditions of this Agreement and AAHH shall not temporarily or permanently shift such funds to other programs or for other purposes for any reason.
- (h) In addition to the above, AAHH will provide certification regarding the expenditure of leveraged funds as described herein.
- (i) AAHH agrees to provide appropriate support documentation for all expenditures for the housing activities.
- (j) Any and all alterations in the approved use of budgeted funds shall be subject to prior review and approval by the County.

3. **Insurance and Liability**

- (a) AAHH or its insurer shall provide the County with a Statement assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount consistent with sound fiscal practice.
- (b) Work to be performed as provided herein shall be done by AAHH or its agent or assign as an Independent Contractor. The County shall not be liable for claims for damages or losses arising out of the performance of this Agreement by AAHH, its employees, officers or agents, and AAHH shall indemnify and hold harmless the County, its officers, agents and employees from all such claims arising under this Agreement.

4. **Publicity.**

- (a) AAHH shall make every effort in its publicity and in other ways to fully inform the public concerning the project. When publicity is given to the project, Buncombe County should be recognized as a contributing entity.

5. **Interests of AAHH**

- (a) AAHH covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. AAHH further covenants that in the performance of this Agreement, no person having such interest shall knowingly be employed by AAHH.
- (b) None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this Agreement: employees, agents, or officials of AAHH, including members and managers, who exercise any function or responsibility with respect to the program. The same prohibition shall be incorporated in all such contracts and subcontracts.
- (c) The assistance provided under this Agreement shall not be used by AAHH to pay a third party to lobby the State of North Carolina for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the Department required under this Agreement.

6. **Suspension or Termination**

- (a) The County, upon written notice to AAHH, may suspend or terminate payment of any project funds to AAHH in whole or in part for cause that shall include, but not be limited to, the following:
  - (1) Ineffective or improper use of loan funds;
  - (2) Failure to comply with the terms and conditions of this Agreement; or
  - (3) Submission of reports, which are incorrect or incomplete in any material respect.
- (b) The County, upon written notice to AAHH, may also withhold payment of any unearned portion of the loan if AAHH is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by state or federal regulations.
- (c) If the County withholds payment, it shall advise AAHH in writing what action must be taken as a condition precedent to the resumption of payments.

(d) This Agreement shall be considered breached if AAHH materially fails to comply with any term in this Agreement, and shall result in the termination of this Agreement with written notice to AAHH of such termination thirty (30) days before such effective date or such longer time as may be necessary to remedy such failure or violation. During the thirty-day notification period, AAHH shall have the opportunity to remedy any failures or violations to avoid termination of the Agreement.

(e) Upon termination, AAHH shall remit any unexpended balance of advanced payments on account of the loan as well as such other portions of such payments previously received as determined by the County to be due, and the action of the County in accepting any such amount shall not constitute a waiver of any claim which the County may otherwise have.

7. **Assignability.** AAHH shall not assign any interest in this Agreement, and shall not transfer any interest in the same whether by assignment or substitution, without the prior written consent of the County, or unless specifically contained in the Scope of Services attached hereto. Any work or services subcontracted hereunder shall be specified by written contract or agreement.

8. **Documents of Incorporation.**

This Agreement is expressly made subject to all attachments hereto and to all of the attachments, provisions, requirements, federal, state, and local laws, rules and regulations. All of the foregoing are incorporated herein by this reference thereto as if fully set forth herein. AAHH hereby agrees to be bound in writing to applicable provisions of these documents.

9. **Miscellaneous Provisions**

(a) **Notices.** Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of AAHH and the County listed below, or those other addresses of which either party gives the other party written notice:

**County of Buncombe**  
Nathan Pennington, Director  
Buncombe County Planning and Development  
46 Valley Street

Asheville, NC 28801

**Asheville Area Habitat for Humanity, Inc.**

Andy Barnett, Executive Director

33 Meadow Road

Asheville, NC 28803

- (b) **Mediation.** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter.
- (1) The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.
- (c) **Legal Proceedings**
- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.
- (d) **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall inure to the benefit and be binding upon the County and AAHH and their respective successors and assigns.
- (e) **Entire Agreement.** This agreement contains the entire agreement between the parties hereto and may not be amended unless in writing and executed by the parties hereto.
- (f) **Severability.** Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement.
- (g) **Counterparts.** This Agreement may be executed in counterparts, each of which

will be deemed an original and all of which, when taken together, will constitute one and the same instrument. Except as expressly provided in this Agreement, there are no third party beneficiaries of this Agreement. All **Exhibits** attached to this Agreement are incorporated into this Agreement by reference. The term “including” in this Agreement will not be construed to be limiting. **Paragraphs 1(I), 2(a),(c),(e) and (f), 4, and 6(e)** will survive the termination of this Agreement for any reason. This Agreement may not be amended except by a written amendment both parties sign. This Agreement is the entire agreement of the parties regarding the subject matter and supersedes all prior and contemporaneous understandings.

IN WITNESS WHEREOF, the County has caused this Agreement to be duly executed on its behalf; and AAHH has caused the same to be duly executed on its behalf.

COUNTY OF BUNCOMBE

BY: \_\_\_\_\_  
Brownie Newman, Chairman  
Buncombe County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Lamar Joyner, Clerk to the Board

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Don Warn, Finance Officer.

ASHEVILLE AREA HABITAT FOR HUMANITY INC.

BY: \_\_\_\_\_(Seal)  
Cassie Dillon, Chair of the Board of Directors

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, \_\_\_\_\_, Notary Public for said County and State, has personal knowledge of the identity of Lamar Joyner, and hereby certifies that Lamar Joyner, Clerk to the Board, personally appeared before me this day and acknowledged that he is Clerk to the Board of Commissioners of County of Buncombe and that Brownie Newman is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by himself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the \_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, Notary Public of the County and State aforesaid certify that Cassie Dillon, personally appeared before me and acknowledged that she is the Chair of the Board of Directors of Asheville Area Habitat for Humanity, Inc., Inc., a North Carolina Non-Profit Corporation, and that she as chair, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



## Attachment A

### Asheville Area Habitat for Humanity, Inc. Old Haywood Project

#### Scope of Services

#### Attachment A: Scope of Services and Time Schedule

With the **\$680,800** awarded by Buncombe County under this contract, Asheville Area Habitat for Humanity, Inc. (AAHH) will develop land, construct 38 homes, and provide direct buyer assistance to empower 38 low-income Buncombe County residents to become homeowners. These 38 homes are the initial construction in a neighborhood of 98 homes on 20.02 acres in western Buncombe County that AAHH will develop over multiple years, with infrastructure completed in two distinct phases. **Design review** and **permitting** for these 38 units began in June 2018; **infrastructure** installation commenced in **April 2019** with the **construction of the 1<sup>st</sup> house** to begin **April 2020**. The 38 units under this contract will be completed by Spring 2023.

AAHH will construct 38 two-unit townhomes or single-family homes. Homes will be accessible as follows: all passage and entry doorways will be at least 36" wide and passageways will be at least 36" wide on the main floor; each unit will have an at-grade or ramped entrance to the main floor, or the ability to easily install a ramp later; and each unit will have a bathroom or half-bath on the main floor that will accommodate a wheelchair. The units will be built to SystemVision and GreenBuilt NC standards, with guaranteed heating and cooling costs around \$25-35/month.

These funds will provide a subsidy of \$16,700 for 24 homebuyer households in need of down payment assistance, and \$20,000 for 14 homebuyer households in need of down payment assistance. The down payment assistance funds (\$16,700 or \$20,000), secured by a lien on subject property, will provide direct affordability assistance to the homebuyer.

Utilizing affordable loans secured with deeds of trust, AAHH will sell these 38 new affordable, energy-efficient homes to qualified households earning 80% or less of AMI, who are not able to provide traditional down payments and who are currently living in substandard conditions. Multiple subordinate liens may be used to achieve affordability for the homeowner **and could be structured** as follows:

- 1) A first deed of trust payable to AAHH representing the cost of construction of the home as determined by AAHH.
- 2) A second deed of trust payable to Buncombe County for \$20,000 for units 25-38 and a third deed of trust for \$16,700 for units 1-24 at zero percent interest securing the funds in this contract. These funds are due and payable by the homeowner:

- a) upon sale and transfer of the unit to a household earning more than 80% AMI (if the sale of the home is to a household earning <80% AMI, the loan shall be assumable at 0% interest);
  - b) when a default occurs under the terms of any loan secured by a lien on this property to which the deed of trust evidencing this **\$16,700 or \$20,000** is subordinated;
  - c) when the unit ceases to be the principal residence of the homeowner.
- 3) A possible third or fourth deed of trust payable to required parties securing any additional public-sector grants or direct buyer assistance.
  - 4) A possible fourth or fifth deed of trust payable to AAHH to secure costs normally covered in the first deed of trust that will become due and payable 1) upon sale and transfer of the unit or 2) if the AAHH homeowner defaults on the first deed of trust. (Note: AAHH reserves the right to secure this lien in an effort to achieve the greatest affordability of the unit.)
  - 5) A deed of trust payable to AAHH securing the difference between the appraised value of the home and the total of all other senior liens. This lien will be junior to liens listed above. This deed of trust will become due and payable 1) upon sale and transfer of the unit or 2) if the AAHH homeowner defaults on the first deed of trust. AAHH forgives this deed of trust in full when the first deed of trust is paid in full by the AAHH Habitat homeowner.

The contracted amount of \$680,800 will not accrue interest and will be assumed by the homeowners.

**Projected Construction Time Schedule:**

March 2015	Acquire land
March 2019	Subdivision plan approval
February-March 2019	Bid preparation/contracting
April-November 2019	Infrastructure Phase I
Spring 2023	Sale of Units/Occupancy by homeowners