



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 11/16/2023

**File ID:** 2023-933

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**Department:** Community Development

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville, Alabama and Arbours at Moores Mill, LLC for HOME funds to construct affordable senior multi-family housing.

Resolution No.

**Finance Information:**

**Account Number:** 515520

**City Cost Amount:** \$ 0

**Total Cost:** \$ 0

**Special Circumstances:**

**Grant Funded:** \$ 420,000.00

**Grant Title - CFDA or granting Agency:** HOME - HUD

**Resolution #:** NA

**Location: (list below)**

**Address:** NA

**District:** District 1  District 2  District 3  District 4  District 5

**Additional Comments:** Agreement with Arbours at Moores Mill for the use of HOME funding.

**RESOLUTION NO. 23 - \_\_\_\_\_**

**WHEREAS**, the City of Huntsville, Alabama, received a grant under Title I of the Housing and Community Development Act of 1974, as amended, from the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, the City of Huntsville committed \$420,000.00 in HOME grant funds to Arbours at Moores Mill, LLC for the development of Arbours at Moores Mill contingent upon the following: 1) receipt by Arbours at Moores Mill, LLC of an allocation of tax credits from the Alabama Housing Finance Authority; and 2) approval by the Huntsville City Council of an Agreement between the City of Huntsville and Arbours at Moores Mill, LLC for HOME Investment Partnership funds; and

**WHEREAS**, Arbours at Moores Mill, LLC has secured the required allocation of tax credits from the Alabama Housing Finance Authority.

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to enter into the Agreement between the City of Huntsville, Alabama and Arbours at Moores Mill, LLC, said Agreement being substantially similar in words and figures to that document identified as "Agreement between the City of Huntsville, Alabama and Arbours at Moores Mill, LLC for HOME Investment Partnership (HOME) Funds," consisting of one hundred (100) pages, including exhibit(s) A, B, C, D, E, F, G, H, I, and J with the signature of the Council President or President Pro Tem, and the date November 16, 2023 appearing on the margin of the first page, a copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville.

**ADOPTED** this the 16th day of November, 2023.

\_\_\_\_\_  
President of the City Council of  
The City of Huntsville, Alabama

**APPROVED** this the 16th day of November, 2023.

\_\_\_\_\_  
Mayor of the City of Huntsville, Alabama

STATE OF ALABAMA )

COUNTY OF MADISON )

**AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA  
AND ARBOURS AT MOORES MILL, LLC  
FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**THIS AGREEMENT** (this “Agreement”), entered into this 16th day of November, 2023, by and between the City of Huntsville, Alabama, a municipal corporation ("City"), and Arbours at Moores Mill, LLC ("Owner") to include any and all other parties (public and private) associated with the project described herein;

**WHEREAS**, the City is the administrator of HOME Investment Partnership funds (“HOME” or “HOME funds”) granted by the U.S. Department of Housing and Urban Development (HUD) under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (P.L. 101-625), as amended; and

**WHEREAS**, the City has received all approvals to utilize HOME Investment Partnership funds to assist the Owner in the construction of an affordable senior housing apartment community, known as Arbours at Moores Mill;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**PART I**

1. **PURPOSE AND SCOPE OF SERVICES:**

- A. The Owner shall use HOME funds, provided by the City for the construction of Arbours at Moores Mill, an 80-unit multifamily property identified in Exhibit A located at 100 Marcus Byers Drive NE, Huntsville, Alabama (“the Project”).
- B. The Owner shall cause to provide affordable *senior rental* housing for a minimum period of twenty (20) years from the time when four (4) units of the property’s eighty (80) units will be HOME assisted and occupied by eligible occupants during the "Affordability Monitoring Period". The units will be designated as “floating” units. Floating units are changed to maintain conformity with the requirements during the period of affordability so that the total number of housing units remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

\_\_\_\_\_  
President of City Council of the  
City of Huntsville, Alabama  
Date: November 16, 2023

From the date of commencement of the Affordability Monitoring Period until its expiration, the four (4) HOME units will be leased to households 62 years and older earning 50% or less of area median income in accordance with occupancy and rent restrictions, a copy of which is attached hereto as Exhibit F. The Owner shall designate in writing to the City's Community Development Director which HOME units are designated low rent and which are designated high rent upon commencement of the Affordability Monitoring Period. Owner shall notify the Community Development Director within 2 weeks of any change in floating HOME unit location. Owner shall provide biannual rent roll of HOME units to the Community Development Director at commencement of the Affordability Monitoring Period until its expiration. Award information is summarized in Exhibit G. According to HOME regulations, rental housing assisted with HOME Investment Partnership funds shall have a deed restriction placed upon it, requiring adherence to the occupancy and rent restrictions of 24 CFR 92.252, with the effective term of said instrument in accordance with 24 CFR 92.252(a)(5).

- C. Development of any architectural designs for the Project shall be the responsibility of the Owner.
- D. The City shall provide technical assistance to the Owner concerning compliance with the terms of this Agreement. The Owner shall be responsible for all sub-contractual arrangements. All procedures shall be carried out in accordance with all Federal, State and local standards, and shall be monitored by the City.
- E. The Project shall be completed in compliance with all applicable state and local building codes; and upon completion, shall be operated in compliance with all applicable state and local codes and ordinances. The Owner agrees the facilities shall be used solely for the purpose of providing affordable senior rental housing as detailed in Part I.1.B of this Agreement.
- F. Owner will comply with NOTICE OF COMPLETION in accordance with Chapter 1, Title 39, Code of Alabama, 1975, if applicable.
- G. Owner and City shall enter into that certain Declaration of Land Use Restrictive Covenants for Huntsville, Alabama HOME Program dated November 16, 2023 (the "Declaration"), a copy of which is attached hereto as Exhibit E and incorporated herein, as said Declaration is affected by that certain HUD Rider to Restrictive Covenants by and between Owner and City attached thereto, a copy of which is attached hereto as Exhibit J and incorporated herein.
- H. The City shall subordinate its Promissory Note, Mortgage and Security Agreement, the Declaration, this Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with its loan to Owner relating to the Project to the liens, terms, covenants and conditions of Merchants Capital Corp.'s ("Senior Lender") Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (Alabama) in an amount not to exceed Six Million One Hundred Ten Thousand And NO/Dollars (\$6,110,000.00) and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered

in connection with Senior Lender’s loan to Owner, as outlined in the Subordination Agreement, a copy of which is attached hereto as Exhibit H and incorporated herein.

2. **TIME OF PERFORMANCE:**

The Owner shall perform according to the following schedule:

	<u>Deadline</u>
1. Execute Contract for Project	November 16, 2023
2. Pre-Construction Conference	Within 30 days of closing
3. Project Start Date	December 31, 2023
4. Project Completion Date	December 1, 2025
5. Lease-Up	April 1, 2026
6. Affordability Monitoring Period	20 years, or, if longer, until the Mortgage is paid off

This schedule is subject to change by mutual agreement of both parties in writing.

3. **PROJECT BUDGET:**

- A. The total Development Budget for the Project is estimated to be \$27,320,399.00, a copy of which is attached hereto as Exhibit B and incorporated herein.
- B. Eligible costs associated with this agreement will include hard construction costs, architectural design, engineering, legal and appraisal fees, and environmental review. Pre-development expenses must be incurred no more than 6 months prior to execution of this contract.

4. **COMPENSATION AND METHOD OF PAYMENT:**

The City shall pay and the Owner agrees to accept in full \$420,000.00 (Four Hundred Twenty Thousand dollars and NO/100) (the “Loan”) for performance under this Agreement, as follows:

- A. Based on the approved budget, partial payments shall be made upon presentation of (i) purchase agreements and invoices, and/or (ii) other source documents. Payments will be made within thirty (30) days for eligible expenses actually incurred by the Owner, and not to exceed actual cash requirements. The Disbursement Agreement, a copy of which is attached hereto as Exhibit I and incorporated herein, outlines the orderly administration of the disbursement of the proceeds from the Project’s sources of funds.
- B. By entering into this agreement, the City confirms that the project covered by this agreement has been approved for HUD funding and the City has received the Release of Funds from HUD. The funds provided by the City may be HUD HOME Investment Partnership funds or HOME Match funds and HUD funds shall be drawn from the U.S. Treasury by the City through the Integrated Disbursement and

Information System (IDIS). The City shall retain exclusive direct access rights to the IDIS system. All access to the IDIS system will be by duly authorized persons designated by the City as approved by HUD. Any termination, reduction or delay of receipt of HOME Investment Partnership funds to the City shall, at the option of the City, result in the termination, reduction or delay of HOME Investment Partnership funds to the Owner.

- C. Funds provided to the Owner shall be expended within 10 business days from the date of disbursement to the Owner by the City. Any funds not disbursed by Owner in the aforementioned time period shall be returned to the City and will be deposited in the U.S. Treasury, HOME Investment Partnership Trust Account. Any interest earned on cash advances from the U.S. Treasury and/or the City of less than one hundred dollars (\$100.00) per year may be retained by the Owner and used for Project expenses. Any interest in excess of one hundred dollars (\$100.00) per year shall be remitted promptly to the City.
- D. Payments of principal and interest shall be structured as a 40-year subordinate loan at 2% interest payable annually from surplus cash flow according to the terms of the promissory note substantially in the form, a copy of which is attached hereto as Exhibit C and secured by a mortgage substantially in the form, a copy of which is attached hereto as Exhibit D. The terms of the Promissory Note are that the first payment of the lesser of **\$25,685.82** or 50% of surplus cash flow shall be due the beginning of the first quarter 12 months after the Project is placed in service. Future annual payments of the lesser of **\$25,685.82** or 50% of surplus cash flow will be due annually from the date of the first payment until all deferred developers fee is paid. Upon final payment of deferred developers fee, the annual payment will be the lesser of \$25,685.82 or 75% of the surplus cash flow until the loan matures. In the case of a sale or refinancing prior to the expiration an amount equal to the full loan shall be repaid to the City unless the City, at the City's sole discretion, elects to continue this Agreement with the new Owner and the property continues to be subject to a legally enforceable retention agreement incorporating the HOME Investment Partnership income eligibility and affordability restrictions.

5. **TERMS AND CONDITIONS:**

- A. The Owner agrees to comply with all applicable federal, state, and local laws and regulations governing the funds provided under this contract. HOME regulations are published in 24 CFR Part 92.
- B. The City shall have no responsibility or liability for the maintenance, operation or program funding for the Owner.
- C. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Owner shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the Owner is an

independent contractor.

- D. During the period of this Agreement, effective as of the start of the Project, the Owner shall, at its own expense, procure and maintain all-risk property damage and liability insurance. For the term of this agreement, the Owner shall list the City as a loss payee on said property insurance. Property damage coverage shall not be less than the current market value of the property. Liability coverage shall include contractual insurance as well as comprehensive form insurance, and shall provide coverage of not less than \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence, and \$1,000,000 property damage. Proof of insurance shall be shown to the City by furnishing a copy of the certificate of insurance issued by an insurance company licensed to do business in the State of Alabama. The certificate of insurance shall include a statement guaranteeing that the insurance company shall notify the City within 30 days of the lapse of said policy.
- E. Until the expiration of the Affordability Monitoring Period, the Owner shall, in a manner satisfactory to the City, fulfill its stated purpose as outlined in Part I.1.B of this Agreement. HOME affordability requirements will expire twenty (20) years after the date that the final HOME assisted unit is occupied by an eligible resident or, if longer, until the Mortgage is paid off, unless legal action causes it to expire for cause prior to that date.
- F. The Owner shall not sell, assign or transfer any legal or equitable interest in the property at any time prior to the expiration of the Affordability Monitoring Period without written concurrence of the City. If, (1) the Owner does transfer without written concurrence of the City, the Owner shall pay to the City the outstanding balance of the loan relating to the property sold or, if (2) the Owner discontinues its program, then Owner shall pay to the City the outstanding balance of the loan then due.
- G. In the event the Owner discontinues the provision of affordable rental housing as funded under this Agreement prior to the expiration of the Affordability Monitoring Period or if the property has been disposed of, then the City will be reimbursed HOME funds from the current Owner in the amount of the outstanding principal balance at the time the rental housing first ceases to be affordable as defined in this Agreement.
- H. Except as provided herein, the terms of this Agreement shall be effective from the date of execution through and including **the expiration of the Affordability Monitoring Period.**
- I. All housing assisted with HOME Investment Partnership funds shall be maintained in compliance with the property standards defined in 24 CFR 92.251, and any locally enforceable housing standards, laws and codes of the City.
- J. An Owner that receives HOME Investment Partnership funds for rental housing shall maintain records indicating that an annual inspection of the rental housing was performed and at a minimum the rental housing meets HUD Section 8 Housing

Quality Standards and all applicable local housing standards.

- K. All mixed income housing projects funded under the terms of this Agreement shall comply with the provisions of 24 CFR 92.255.
- L. All projects shall adhere to the project requirements found in Subpart F of 24 CFR Part 92, as applicable in with the type of project assisted.
- M. An Owner that receives HOME Investment Partnership funds for rental housing shall have a Tenant Participation Plan, approved by the City, in accordance with 24 CFR 92.303.

## **PART II**

### 1. **PERFORMANCE AND REPORTING:**

- A. The Owner shall direct all notices, reports, insurance policies, and other communications related to or required by this Agreement to the office of the City of Huntsville, Department of Community Development, P.O. Box 308, Huntsville, Alabama 35804. Notice by both Owner and City shall be given by ordinary mail.
- B. Until the completion of the Project and expenditure of all HOME Investment Partnership funds disbursed under this Agreement, the Owner shall submit quarterly reports describing progress of the Project activities. This report will be due 10 (ten) days after the end of each quarter.
- C. An Owner that receives HOME Investment Partnership funds for rental housing shall maintain records of determination of each tenant income eligibility and eligibility as a family at the time the household(s) receive the assistance. The Owner shall reexamine family income, size and composition at least annually unless waived by mutual consent by the U.S. Department of Housing and Urban Development, the City of Huntsville and the Owner.
- D. The Owner shall submit annual reports (July 1 – June 30) by the first day of August of each contract year through the end of the Affordability Period. The annual report shall, at a minimum, include statistics relating to the number of households being assisted with HOME Investment Partnership funds, household size, racial characteristics, single head of household by gender, household income and a narrative of Project highlights.
- E. For projects with a HOME grant or loan of \$300,000 or more (including all funding sources), an audit report which discloses the expenditure of HOME Investment Partnership funds allocated for the Project, shall be submitted 6 months after the project is placed in service.
- F. No reporting requirements for City HOME funds shall extend beyond the final annual report that is due at the expiration of the Affordability Monitoring Period.



2. **OTHER REPORTS, AUDITS AND INSPECTIONS:**

- A. The Owner shall promptly furnish the City or HUD with any financial records, statements, other records, data and information as the City or HUD may reasonably request pertaining to this Agreement.
- B. During the term of this Agreement, any time during normal business hours, the Owner shall within three (3) business days of request make available to the City, HUD and/or the Comptroller General of the United States, or their duly authorized representatives, all of the Owner's records in order to permit examination of any audits, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to all matters covered by this Agreement.
- C. The Owner shall retain financial records, supporting documents, statistical records, and all other records pertaining to expenditures under this Agreement for a period of five (5) years after the termination of this Agreement.

3. **ADMINISTRATIVE REQUIREMENTS:**

A. Financial Management

1. Accounting Standards

The Owner shall maintain Accounting Standards in accordance with the requirements 2 CFR PART 200 – “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”. Copies of said regulations are provided and by execution of this Agreement, the Owner acknowledges their receipt.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Owner shall maintain all records that are pertinent to the activities to be funded under this Agreement, including but not limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance;
- c) Records documenting compliance with the fair housing and equal opportunity components of the HOME program; and
- d) Financial records as required by 2 CFR PART 200, as appropriate.

The Owner shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, signed verification of income statement, or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

2. National Objectives and Eligibility

The Owner agrees to maintain documentation demonstrating the activities carried out with funds provided under this contract benefit low-income persons, as defined in 24 CFR Part 92.216 and/or 92.217.

3. Compliance

In the event of termination for cause as provided in paragraph 13 or termination for convenience as provided in paragraph 14, a pro-rated portion of program assets (unexpended program income, property, equipment, etc.) attributable to the City's HOME investment shall revert to the City upon termination of this contract, as provided in Paragraph 13 or Paragraph 14 of this Agreement.

4. Procurement of Services and Materials

Throughout the construction period, the Owner shall procure services and materials in accordance with the requirements 2 CFR 200 – "UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS". Copies of said regulations are provided and by execution of this Agreement, the Owner acknowledges their receipt.

5. Amendments

The City or Owner may amend this Agreement at any time provided that such amendments 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 Owner from its obligations under this Agreement.

4. **NON-DISCRIMINATION and AFFIRMATIVE MARKETING:**

No person shall be excluded from or denied the benefits of the Owner's service on the basis of age, race, color, religion, creed, national origin, sex, marital status, disability, gender identity or sexual orientation. All current and prospective Project beneficiaries must, however, be persons in need of the programs provided by the Owner. The Owner shall comply with the affirmative marketing requirements set forth in 24 CFR 92.351.

5. **SECTION 504 COMPLIANCE:**

No otherwise qualified individual with handicaps shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. This includes, but is not limited to, programs and/or activities related to housing, employment, and the delivery of services.

6. **EQUAL EMPLOYMENT OPPORTUNITY and FAIR HOUSING:**

The Owner certifies that it is an "Equal Opportunity Employer" and that it will comply with all applicable regulations of the U.S. Department of Housing and Urban Development pertaining to equal opportunity and affirmative action in employment. Further, the Owner shall ensure that all contracts for work under this Agreement contain appropriate equal employment opportunity statements. The Owner certifies that it will comply with all applicable regulations of the Fair Housing Act (42 USC 3601-19) and implementing regulations at 24 CFR part 100. In addition, Owner shall comply with all provisions of 24 CFR 92.350.

7. **SECTION 3:**

Any contract of \$200,000 or greater entered into by the Owner shall adhere to the following Section 3 requirements and provide reports as required by HUD. The Owner agrees to comply with Section 3 requirements, the requirements under 24 CFR 92.350, the regulations set forth in 24 CFR 135, and to include the following language in all subcontracts executed under this Agreement:

*The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*

*Section 3 applies to recipients of more than \$200,000 from housing and community development programs and all contractors or subcontractors that receive covered contracts in excess of \$100,000 for housing construction, rehabilitation, or other public construction.*

*The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*

*The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*

*The contractor agrees to include this Section 3 clause in every subcontract subject to*

*compliance with the regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*

*The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*

*Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*

8. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:**

The Owner will use its best efforts to afford minority and women-owned business enterprises (at least fifty-one (51) percent owned and controlled by minority group members or women) the maximum practicable opportunity to participate in the performance of this Agreement.

9. **LABOR:**

New construction and rehabilitation projects funded under the HOME Investment Partnership program that contain more than 11 (eleven) HOME-assisted units shall comply with the labor provisions outlined in 24 CFR 92.354. The Owner agrees to adhere to said provisions and will not use suspended or debarred contractors and will abide by 24 CFR 92.357. The Owner shall be responsible for compliance with all requirements of Davis Bacon Act.

10. **ENVIRONMENTAL ASSESSMENT AND HISTORIC PRESERVATION:**

The Owner shall comply with all applicable environmental assessment and historic preservation requirements of HUD and the State Historic Preservation Officer of Alabama.

11. **LEAD-BASED PAINT POISONING PREVENTION:**

The Owner shall comply with requirements of Section 302 of the Lead-Based Paint Poisoning Prevention Act and HUD regulations there under (24 CFR 92.355) insofar as they apply to the performance of this Agreement.

12. **BUILD AMERICA, BUY AMERICA:**

The Owner 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 Owner'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 Financial 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.

13. **TERMINATION OF AGREEMENT FOR CAUSE:**

If the Owner fails to materially fulfill its obligations under this Agreement in a timely and proper manner, or if the Owner violates any of the terms, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Owner of such termination, specifying the default or defaults, and stating that this Agreement shall be terminated 30 days after the giving of such notice unless such default or defaults are remedied within such cure period unless the default or violation is of a nature that it cannot be cured within thirty (30) days in which event Owner shall be provided additional time to cure so long as Owner initiated its efforts to cure such default within said thirty (30) day time period and diligently pursues such cure to completion. The City shall be obligated to make no payment due hereunder after it gives said notice unless the defaults are remedied within said 30-day period. In the event of such termination, the Owner shall promptly repay to the City the full loan amount or that portion of the amounts that have been disbursed to the Owner prior to such termination. Owner's investor member shall be sent a copy of all notices sent to Owner at the following address:

Wells Fargo Bank, National Association  
550 S. Tryon Street  
23<sup>rd</sup> Floor, MAC D1086-239  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset Management  
Email: Bina.M.Galal@wellsfargo.com  
Email: Michael.Loose@wellsfargo.com

with a copy to:

Canon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, NY 14210  
Attn: Constance C. Giessert, Esq.  
Email: cgiessert@chwattys.com

Owner's investor member may cure any default hereunder on behalf of Owner and such cure shall be accepted as if made by Owner; provided, however, that nothing herein shall obligate the investor member to provide such cure.

14. **TERMINATION OF AGREEMENT FOR CONVENIENCE:**

This Agreement may be terminated in whole or in part upon the mutual agreement of the parties hereto, in which case the City and the Owner shall agree upon the termination conditions, including the effective date, the disposition of contract amounts, and in the case

of partial termination, the portion to be terminated. However, if, in the case of partial termination, the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, and the award is terminated in its entirety, the Owner shall promptly repay to the City the full grant and/or loan amount or that portion of the amount which has been disbursed to the Owner prior to such termination.

15. **INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS:**

- A. No member or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit to arise herefrom.
- B. No member of the governing body of the City, no officer, employee, official or agent of the City, or other local public official who exercises any functions or responsibilities in connection with the review, approval or carrying out of the Project to which this Agreement pertains, shall have any private interest, direct or indirect, in this Contract.
- C. No federal funds appropriated under this contract shall be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence a member of Congress, an officer or employee of Congress or any federal agency 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 agreement.
- D. 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 of Congress, or an employee of a Member of Congress in connection with this federal contract, the Owner shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- E. The Owner shall require that the language of this certification be included in the award documents for all sub-Developers and that all sub-Developers shall certify and disclose accordingly.
- F. The Owner agrees to comply with the provisions of 24 CFR 92.356.

16. **GRANTOR RECOGNITION:**

All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as HOME funded. In addition, the Owner will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

17. **ASSIGNABILITY:**

The Owner shall not assign or transfer any interest in this Agreement without the prior written approval of the City. Any assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

18. **HOLD HARMLESS PROVISION:**

The Owner shall indemnify, defend and hold harmless the City, its officers, employees and agents from all liability, loss, cost, damage and expense (including reasonable attorney's fees and court costs) resulting from or incurred by reason of any actions based upon the negligent acts or omissions of the Owner's employees or agents during the performance of this Agreement.

19. **SEVERABILITY CLAUSE:**

If any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable, this Agreement shall be deemed severable and the remainder of the Agreement shall remain in full force and effect.

20. **LIMITATIONS OF CITY LIABILITY - DISCLAIMER OF RELATIONSHIP:**

The City shall not be liable to the Owner, or to any party, for completion of or failure to complete any improvements which are part of the Project. Nothing contained in this Agreement, nor any act or omission of the City or the Owner, shall be construed to create any special duty, relationship, third-party beneficiary, respondent superior, limited or general partnership, joint venture, or any association by reason of the Owner's involvement with the City.

The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, standing, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on this 16th day of November 2023.

**CITY OF HUNTSVILLE, ALABAMA**

By: \_\_\_\_\_  
Tommy Battle, Mayor  
City of Huntsville, Alabama

ATTEST:

\_\_\_\_\_  
Shaundrika Edwards, City Clerk  
City of Huntsville, Alabama

**ARBOURS AT MOORES MILL, LLC**  
an Alabama limited liability company

By: Moores Mill MM, LLC  
an Alabama limited liability company  
its Managing Member

By: \_\_\_\_\_  
Samuel T. Johnston,  
Authorized Member

ATTEST:

By: \_\_\_\_\_  
Moores Mill MM, LLC



**EXHIBIT A**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Legal Description HOME Assisted Property**

Lot 1A, Arbours at Moores Mill, according to the plat thereof recorded in Plat File # 2021-19664, of the record in the Office of the Judge of Probate, Madison County, Alabama.

PIN: 152525

PARCEL: 13-03-08-0-001-016.001

**EXHIBIT B**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Development Budget**

<b>SOURCES</b>	
Merchants d4	\$6,110,000
HOME Permanent Loan	\$420,000
UB Soft Loan	\$250,000
TAX CREDIT EQUITY	\$20,013,699
Deferred Developer Fee	\$526,700
<b>Total Sources</b>	<b>\$27,320,399</b>

<b>USES</b>	
Construction Cost	\$17,439,874
Payment and Performance Bond	\$129,072
Land Cost	\$816,958
Permitting and Tap fees	\$451,898
Interest During Construction	\$1,470,254
AHFA Compliance Fee	\$60,000
Eng. & Architect	\$596,000
Builders Risk	\$181,500
Taxes During Construction	\$20,000
Legal and Organization	\$175,000
Other (Clubhouse, Marketing, etc.)	\$218,600
Title and Recording	\$119,016
Syndication Fee and Org/Inspection	\$40,000
Operating/Replacement Reserve	\$450,077
Loan Fees	\$431,014
AHFA Cost	\$35,617
Builders Profit and Overhead	\$1,283,411
Contingency	\$936,483
Developers Fee	\$2,465,625
<b>TOTAL USES</b>	<b>\$27,320,399</b>

**EXHIBIT C**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Promissory Note**

## PROMISSORY NOTE

FOR VALUE RECEIVED, Arbours at Moores Mill, LLC, an Alabama limited liability company (hereinafter “Promisor”) promises to pay to the order of THE CITY OF HUNTSVILLE, ALABAMA, an Alabama municipal corporation, acting by and through the Department of Community Development, its successors and assigns (hereinafter “Holder”), the sum of Four Hundred Twenty Thousand and No/100 Dollars (\$420,000.00), or so much thereof as may be advanced and outstanding hereunder (the “Loan”), payable to the Holder at P.O. Box 308, Huntsville, Alabama, or at such other place as Holder may from time to time designate, in the manner hereinafter set forth. Interest on the Loan shall accrue at the rate of two percent (2.0%) per annum on the unpaid balance for the 40-year term of the Loan. The first payment of the lesser of \$25,685.82 or 50% of surplus cash flow shall be due the beginning of the first quarter 12 months after the Project is placed in service. Future annual payments of the lesser of \$25,685.82 or 50% of surplus cash flow will be due annually from the date of the first payment until all deferred developers fee is paid. Upon final payment of deferred developers fee, the annual payment will be the lesser of \$25,685.82 or 75% of the surplus cash flow until the loan matures.

This Note is payable on **DEMAND** in the event, but only in the event of a default under any of the Loan Documents, giving consideration to any grace or cure period that may be expressly provided for therein; otherwise, this Promissory Note is payable in full forty (40) years after the date of the Project is placed in service (the “Maturity Date”).

After payments in accordance with the terms previously set forth herein, all remaining sums outstanding shall be due and payable in full on the “Maturity Date”.

### NONRECOURSE TO MAKER

(a) Except as otherwise provided below, notwithstanding anything to the contrary in this Note, in any action brought to enforce the obligations of the Promisor under this Note or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note (collectively the “Loan Documents”), the judgment or decree shall be enforceable against the Promisor only to the extent of its interests in any collateral security for the payment of the Note, and Holder shall not seek any deficiency judgment against the Promisor. The foregoing provisions shall not prevent recourse to the collateral security for the Loan or constitute a waiver, release or discharge of, or otherwise affect the obligation to pay any indebtedness evidenced by the Loan Documents or limit the right of any person to name the Promisor or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the Loan Documents so long as no deficiency judgment shall be sought against the Promisor and/or any such other person.

(b) Notwithstanding the foregoing, Promisor shall, however, indemnify, defend, protect and hold Holder harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorney’s fees and expenses) incurred by Holder as a result of any (i) fraud or material misrepresentation under or in connection with the loan or any loan document; (ii) intentional bad faith waste of the real property more particularly described in the Mortgage; (iii) losses resulting from Promisor’s failure to maintain insurance as required under the mortgage executed same day herewith (the “Mortgage”); and (iv) application of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security in a manner prohibited by the Loan Documents.

Promisor reserves the right to prepay this debt at any time, in whole or in part without payment of penalty, premium or fee. All payments made by Promisor shall be applied first to principal prior to application of payments to interest or other charges incurred.

In the event the undersigned shall fail to pay any sum herein required to be paid when due and if such failure be subsisting on the date the next installment payment under this Note becomes due and payable, the unpaid principal

amount of this note, together with accrued interest, shall become immediately due and payable, at the option of the Holder, without notice to the undersigned. Failure of the Holder to exercise such option shall not constitute a waiver of such default.

If any scheduled payment is in default more than ten (10) days, the undersigned shall pay to the Holder a late charge not to exceed five percent (5.0%) per annum of the amount of such scheduled monthly payment in default. If said Note be reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

Demand, protest and notice of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

As long as HUD is the insurer or holder of the Senior Note (as such term and other capitalized terms are defined in the form Subordination Agreement, HUD-92420M) on FHA Project No. 062-35817 (the “**Project**”), the following provisions (“**HUD Provisions**”) shall be in full force and effect:

- (a) any payments due under this Note shall be payable only (i) from permissible distributions from **Surplus** Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Promisor cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Promisor to pay the indebtedness evidenced by this Note;
- (b) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD.
- (c) this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;
- (d) interest on this Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;
- (e) Promisor hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;
- (f) the terms and provisions of this Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Note may not be modified or amended without the written consent of HUD; and
- (g) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.”

The terms and conditions of that certain agreement between the City of Huntsville and Arbours at Moores Mill, LLC, dated November 16, 2023 and adopted and approved by the City Council of the City of Huntsville pursuant to Resolution No. 23-\_\_\_\_\_ are incorporated herein as fully and to the same extent as though fully set forth therein.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representative, as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Promisor:

Arbours at Moores Mill, LLC,  
an Alabama limited liability company

By: Moores Mill MM, LLC  
an Alabama limited liability company  
Its Managing Member

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF MADISON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of Moores Mill MM, LLC, an Alabama limited liability company, which is the Managing Member of Arbours at Moores Mill, LLC is signed to the foregoing promissory note, and who is known to me, acknowledged before me on this day that, being informed of the contents of such promissory note, he as such officer and with full authority to act on behalf of said entity, executed the same voluntarily for and as the act of said entity in its capacity as the \_\_\_\_\_ of Moores Mill MM, LLC, an Alabama limited liability company, which is the Managing Member of Arbours at Moores Mill, LLC, an Alabama limited liability company.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(SEAL)

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT D**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Mortgage and Security Agreement**

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE is made on this the 16th day of November, 2023, between **ARBOURS AT MOORES MILL, LLC, an Alabama limited liability company** whose address is 242 Inverness Center Drive, Birmingham, Alabama (Referred to as “Mortgagor”) and **THE CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation, acting by and through the Department of Community Development, P.O. Box 308, Huntsville, Alabama 35804 (referred to as “Mortgagee”).

### Recitals

The Mortgagor has executed and delivered to the Mortgagee a Promissory Note in the amount of Four Hundred Twenty Thousand and No/100 Dollars (**\$420,000.00**) (“Note”), in which the Mortgagor promises to pay to the Mortgagee said sums, in lawful money of the United States, advanced or to be advanced by the Mortgagee to the Mortgagor, with interest on the principal sum at the rate and times, in the manner, and according to the terms and conditions specified in the Note. The \$420,000.00 lent to the Mortgagee under the Note, or such sums that may be advanced from time to time under the Note, shall be referred to as the “Loan” and any outstanding balances, including fees and expenses, may be referred to as “Indebtedness.” This Mortgage also secures the Mortgagor’s obligations under the “Declaration of Land Use Restrictive Covenants for Huntsville, Alabama HOME Program” (the “HOME Covenants”), which is attached as Exhibit E to the Agreement Between the City of Huntsville, Alabama and Arboours at Moores Mill, LLC, for HOME Investment Partnership (HOME) Funds dated as of November 16, 2023, (the “HOME Agreement”), as affected by that certain HUD Rider to Restrictive Covenants attached thereto, which is attached as Exhibit J to the HOME Agreement, which terms and obligations are hereby incorporated into this Mortgage. **The total principal indebtedness secured shall not exceed the face amount of this Mortgage.**

NOW, THEREFORE, in consideration of the indebtedness, as security for payment to the Mortgagee of the principal and any interest, as well as all other sums provided for in the Note and in this Mortgage, in accordance with their respective terms and conditions, and for performance of the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage, the HOME Covenants, and in the Note (which, along with all other documents or instruments relating to the Loan, shall be referred to collectively as the “Loan Documents”), the Mortgagor grants, conveys, and mortgages to the Mortgagee all the real estate described in Exhibit “A” attached to and made a part of this Mortgage;

TOGETHER WITH the following, which shall be referred to collectively with the real estate described in Exhibit “A” as the “Mortgaged Property”:

- (1) Any and all buildings and improvements erected or subsequently erected on the property (the “Improvements”);
- (2) Any and all fixtures, appliances, machinery, equipment, and other articles of personal property at any time installed in, attached to, or situated in or on the real estate or the buildings and improvements to be erected on the real estate, or to be used or intended to be used in connection with the real estate or in the operation of the buildings, improvements, plant, business, or dwelling on the real estate, whether or not the personal property is or shall be affixed to the real estate;
- (3) All building materials, fixtures, building machinery, and building equipment delivered to the site of the real estate during the course of, or in connection with, construction of the buildings and improvements;
- (4) Any and all tenements, hereditaments, and appurtenances belonging or in any way pertaining to the real estate or any part of the real estate mortgaged or intended to be mortgaged under this Mortgage;



- (5) All streets, alleys, passages, ways, and water courses; all easements and covenants now existing or subsequently created for the benefit of the Mortgagor or any future Owner or tenant of the mortgaged real estate over ground adjoining the mortgaged real estate; and all rights to enforce the maintenance of such accesses and rights;
- (6) All other rights, liberties, and privileges; all reversions, remainders, income, rents, issues, and profits arising from them; and all the estate, right, title, interest, property, possession, claim, and demand, at law or in equity, of the Mortgagor in and to the real estate or any part of it; and
- (7) The proceeds and replacements of any of the foregoing;

ALSO TOGETHER WITH any and all awards made to the present and subsequent Owners of the Mortgaged Property by any governmental or other lawful authorities for taking or damaging by eminent domain of all or any part of the Mortgaged Property or any easement in the property. The Mortgagor assigns such awards to the Mortgagee, who is authorized to collect and receive the proceeds of any awards from the authorities, to give proper receipts and acquittances for those awards, and to apply them (after deduction of attorneys' fees and other costs incurred in connection with collecting the funds) toward the payment of the amount owing on account of this Mortgage and the accompanying Note, even though the amount owing may not then be due and payable. The Mortgagor agrees to make, execute, and deliver, on request, any and all assignments and other instruments sufficient for the purpose of assigning the awards to the Mortgagee, free, clear, and discharged of any and all encumbrances. The Mortgagor further agrees to give the Mortgagee immediate notice of the actual or threatened commencement of any proceedings in the nature of eminent domain affecting all or any part of the Mortgaged Property, and will deliver to the Mortgagee copies of any papers served on the Mortgagor in connection with any such proceedings. No settlement for the damages sustained shall be made by the Mortgagor without the Mortgagee's prior written approval. Approval shall not be unreasonably withheld.

TO HAVE AND TO HOLD for its own use forever, the Mortgagee is granted, under this Mortgage, the interests and rights in the Mortgaged Property as described above; PROVIDED ALWAYS, and this Mortgage is executed on the express condition that, if the Mortgagor pays to the Mortgagee the principal sum of the Note, the interest, and all other sums that are secured by this Mortgage and that are payable by the Mortgagor to the Mortgagee, in accordance with the provisions of the Note and this Mortgage, at the times and in the manner specified, and without deduction, fraud, or delay, and if the Mortgagor performs and complies with all the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage and in the Note, and the HOME Covenants then this Mortgage and the estate granted by it shall cease and become null and void, except for the provisions which explicitly survive the satisfaction of this Mortgage, if any.

As part of the consideration for the indebtedness secured hereby and to protect the security of this Mortgage, THE MORTGAGOR COVENANTS and agrees as follows:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

#### **1.01. Status of Collateral.**

- (a) The Mortgagor has good and marketable fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, charges, and all other conditions except, those set forth in the Lender's Title Policy including, without limitation, mortgages in favor of (i) **Merchants Capital Corp.**, and (ii) **United Bank**, ad valorem taxes not yet due and payable, restrictions, reservations and easements of record as of the date hereof and any restrictive covenants associated with the low income housing tax credits allocated to the Mortgagor (the "Permitted Encumbrances").

(b) The Mortgaged Property is free from all defects which would materially interfere with the value of the Mortgaged Property and is constructed in compliance with all laws, ordinances, covenants, conditions, restrictions, and reservations including, without limitation, zoning ordinances affecting the Property.

(c) There are presently in effect all material licenses, certificates of occupancy and permits as may be required for the present and proposed operation and use of the Mortgaged Property.

(d) To the best of Mortgagor's knowledge after due inquiry, the Property and Improvements are zoned to permit the present and proposed operation and use thereof, or of a pre-existing non-conforming use which can be continued under the applicable zoning ordinance, and under such applicable zoning ordinance the Property and Improvements can be restored to their presently existing condition and use in the event of a casualty.

(e) To the best of Mortgagor's knowledge after due inquiry, no material structural defects or dangerous conditions exist with respect to any Improvements.

**1.02 Survival of Representations and Warranties.** Mortgagor covenants and agrees with Mortgagee that all representations and warranties of Mortgagor contained in the Loan Documents shall be true at the time of the execution of each of the Loan Documents, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

## ARTICLE II COVENANTS OF MORTGAGOR

**2.01. Payment and Performance.** The Mortgagor shall pay to the Mortgagee, in accordance with the terms of the Note and this Mortgage, the principal, interest, and other sums, and shall perform and comply with all the agreements, conditions, covenants, provisions, and stipulations of the Note and this Mortgage.

**2.02. Maintenance of Mortgaged Property.** The Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property. The Mortgagor shall not remove or demolish, or alter the structural character of, any building erected at any time on the Mortgaged Property without the prior written consent of Mortgagee. The Mortgagor shall not permit the Mortgaged Property to become vacant, deserted, or unguarded, and shall maintain the Mortgaged Property in good condition and repair, with reasonable wear and tear excepted, making all repairs of every nature whenever necessary.

**2.03. Insurance.** The Mortgagor shall maintain such insurance as the Mortgagee may reasonably require and as set forth in any of the Loan Documents.

**2.04. Taxes and Other Charges.**

(a) The Mortgagor shall pay, when due and payable and before interest or penalties accrue, all taxes, assessments, water and sewer rents, and other charges or claims that may be assessed, levied, or filed at any time against the Mortgagor, against all or any part of the Mortgaged Property, or against the interest of the Mortgagee in the Mortgaged Property; or that, by any present or future law, may have priority over the indebtedness secured by this Mortgage either in lien or in distribution out of the proceeds of any judicial sale. The Mortgagor shall produce receipts for payment of these amounts to the Mortgagee not later than the payment dates.

(b) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in

force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Mortgagee in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Mortgagee.

**2.05. Installments for Insurance, Taxes, and Other Charges.** Intentionally Omitted.

**2.06. Condemnation.**

(a) Mortgagor's Responsibilities: Proceedings. The Mortgagor, immediately upon obtaining knowledge thereof, shall notify the Mortgagee of any pending or threatened proceedings for the condemnation of any of the Mortgaged Property or of the exercise of any right of eminent domain with respect thereto, or any other pending or threatened proceedings arising out of injury or damage to any of the Mortgaged Property. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time shall execute and deliver to the Mortgagee all instruments requested by the Mortgagor to permit such participation. The Mortgagor shall, at the Mortgagor's expense, diligently prosecute any such proceedings, deliver to the Mortgagee copies of all papers served in connection therewith and consult and cooperate with the Mortgagee, its attorneys and agents, in carrying on and defending any such proceedings.

(b) Mortgagee's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Mortgaged Property shall be paid to the Mortgagee (subject to the rights of superior lien holders). The Mortgagor authorizes the Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Mortgagee shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

**2.07. Inspections.** The Mortgagee, and any persons authorized by the Mortgagee, shall have the right at any time, on reasonable notice to the Mortgagor, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair.

**2.08. Defaults and Right to Remedy.** The Mortgagee, at its option and without notice to the Mortgagor, shall have the right to make any payment or expenditure that the Mortgagor should have made, or that the Mortgagee deems advisable, to protect the security of this Mortgage or the Mortgaged Property, if the Mortgagor fails to pay taxes, assessments, water and sewer charges, other claims for which liens may be attached to the Mortgaged property (except in case of contest), or insurance premiums; fails to make necessary repairs; permits waste; or otherwise fails to comply with its obligations under this Mortgage, the Note, the HOME Covenants, or any other document executed in connection with this Mortgage. Any payment by the Mortgagee shall be without prejudice to any of the Mortgagee's rights or remedies under this Mortgage, at law, or in equity. All sums, as well as costs, advanced by the Mortgagee pursuant to this Mortgage, shall be due immediately from the Mortgagor to the Mortgagee, shall be secured by this Mortgage, and shall bear interest at two (2) percent annually in excess of the rate otherwise provided in the Note from the date of payment by the Mortgagee until the date of repayment.

**2.09. Sale, Lease or Transfer, Etc.**

(a) Real Property. Except for Permitted Encumbrances the Mortgagor shall not sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Mortgaged Property or any interest therein; or subject any of the Mortgaged Property or any interest therein to any additional lien, either voluntarily or involuntarily without the Mortgagee's prior written consent.

(b) Equity Interest in Mortgagor. The Mortgagor (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Mortgagor, or any other transaction whereby the legal or beneficial Ownership of the Mortgagor is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Mortgagor, the merger or consolidation of the Mortgagor with any other person, or the participation by the Mortgagor in a statutory share exchange with any other person, shall be treated as a transfer of the Mortgaged Property for purposes of this Section. Notwithstanding the foregoing or anything to the contrary in the Loan Documents, none of the following shall be treated as a transfer for purposes of this Section or result in a default under the Loan Documents: (i) the pledge by the Managing Member of Mortgagor of its interest in Mortgagor to Wells Fargo Bank, N.A. in connection with the construction loan obtained by Mortgagor from Wells Fargo Bank, N.A., (ii) the transfer of the Investor Members' interest in the Mortgagor to another entity whether or not affiliated with or controlled by the current Investor Member, (iii) the removal of the Managing Member by the Investor Member and the replacement of such managing member, and (iv) the pledge by the Investor Member of Mortgagor of its interest in Mortgagor to Wells Fargo Bank, N.A. in connection with the construction loan obtained by Mortgagor from Wells Fargo Bank, N.A..

### ARTICLE III

#### DEFAULT AND REMEDIES

**3.01. Events of Default.** Any one or more of the following shall constitute an "Event of Default":

(a) The failure of the Mortgagor to pay an installment of principal or interest, or any other sum, on the date it is due under the Note or this Mortgage; provided, however, the Mortgagor shall give notice of such failure to the Limited Member of Mortgagor as provided below and allow the Investor Limited Member an additional thirty (30) days to make such payment. The Investor Member shall have the right, but no obligation, to make such payment.

(b) The Mortgagor's nonperformance of or noncompliance with any of the other agreements, conditions, covenants, provisions, or stipulations contained in the Note, in this Mortgage, the HOME Covenants, or in any other document executed in connection with this Mortgage but only if such nonperformance or noncompliance is not cured within thirty (30) days of Mortgagee's written notice to Mortgagor and its Investor Member.

(c) The entry of a decree or order for relief by a court that has jurisdiction of the Mortgaged Property in respect to the Mortgagor in an involuntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law; the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official for any substantial part of the Mortgagor's property; or the ordering of the winding-up or liquidation of the Mortgagor's affairs.

(d) The commencement by Mortgagor of a voluntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law; the consent by the Mortgagor to the appointment of, or the taking of possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official for any substantial part of the Mortgagor's property; the making by either the Mortgagor or any guarantor of any assignment for the benefit of creditors; or the failure of either the Mortgagor or a guarantor generally to pay its debts as they become due.

(e) The failure, within sixty (60) days after the entry of a final judgment for the payment of money that is rendered against the Mortgagor.

(f) In the event the Mortgagor herein sells, transfers or conveys the real estate described herein other than as allowed by any Loan Documents.

**3.02. Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire balance of the Indebtedness (including but not limited to the Loan) secured hereby (or such parts as Mortgagee may elect) with interest accrued thereon (or such parts as Mortgagee may elect) shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

**3.03. Right of Mortgagee to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Mortgagee or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Mortgagor or then Owner of the Mortgaged Property relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking possession, the Mortgagee, as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Mortgagee) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, presently and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Mortgagee) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Mortgagee) and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be its best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or an portion thereof selected by Mortgagee), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Mortgagee may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, shall apply the remainder of the moneys so received by the Mortgagee, first to the payment of accrued interest under the Note; second to the payment of ad valorem taxes upon the property currently due; third to the payment of any other sums required to be paid by the Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; and the balance, if any, as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**3.04. Receiver.**

(a) If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(b) The Mortgagor shall pay to Mortgagee upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 3.04; and all such expenses shall be secured by this Mortgage.

**3.05. Power of Sale.** At the option of said Mortgagee, this Mortgage may be foreclosed as now provided by law in case of past due Mortgages; and the Mortgagee shall be authorized to take possession of the premises hereby conveyed, and after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the county wherein said property is located, to sell the same in front of the courthouse door of the county wherein said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or that may then be necessary to expend, in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the Mortgagor.

And the undersigned further agrees that said Mortgagee, its successors, or assigns, may bid at any sale had under the terms of this Mortgage, and purchase the Mortgaged Property, if the highest bidder therefor; and the undersigned further agrees to pay a reasonable attorney's fee to said Mortgagee, its successors or assigns for the foreclosure of this Mortgage, either under the power of sale contained herein or by virtue of the decree of any court of competent jurisdiction, said fee to be a part of the debt herein secured, and the purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money.

In the event of a sale hereunder, the Mortgagee, or Owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the undersigned a good and sufficient deed to the property sold.

**3.06. Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute.

**ARTICLE IV**

**ADDITIONAL PROVISIONS**

**4.01. Notices.** All notices permitted or required under this Mortgage or the Note shall be in writing, and shall be personally delivered, or sent by registered or certified mail, postage prepaid, and addressed to the addressee, at the

address set forth above or at such other address as the addressee may designate in writing from time to time. A copy of any notice sent to Mortgagor shall also be sent to Mortgagor's Investor Member at:

Wells Fargo Bank, National Association  
550 S. Tryon Street  
23rd Floor, MAC D1086-239  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset Management

Bina.M.Galal@wellsfargo.com  
Michael.Loose@wellsfargo.com

**4.02. Amendment.** This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

**4.03. Parties Bound.** This Mortgage shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. For purposes of this Mortgage, as well as the other Loan Documents, the neuter gender shall include the masculine and the feminine, the singular shall include the plural, and the plural shall include the singular, as the context may require.

**4.04. Interest Rate.** Notwithstanding any provision contained in this Mortgage or in the Note, the Mortgagor's liability for interest shall not exceed the limits now imposed by the applicable usury law. If any clause in the Note or this Mortgage requires interest payments in excess of the highest rate permitted by the applicable usury law, the clause in question shall be deemed to require payment at the highest interest rate allowed by the applicable usury law.

**4.05. Captions.** The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction, or effect.

**4.06. Financial Statements.** As long as the debt secured by this Mortgage remains unpaid in whole or in part, the Mortgagor covenants to furnish each year to the Mortgagee such financial statements as required by the agreement entitled "Agreement between the City of Huntsville, Alabama and Arbours at Moores Mill, LLC for HOME Investment Partnership Funds."

**4.07. Waiver.** The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any waiver option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default.

**4.08. Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, or in any of the other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note and in the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

**4.09. Conflict in Loan Documents.** In the event of conflict in the terms of any provision in this Mortgage, the Note, or any of the other Loan Documents, the terms of the provision most favorable to the Mortgagee shall apply.

**4.10. Loan Documents.** Wherever reference is made herein to this Mortgage, the Note, or the other Loan Documents, such reference shall include all renewals, extensions, modifications and refinancing's thereof.

**4.11. Definitions.** Any capitalized term not defined in the Mortgage shall be assigned the meaning defined elsewhere in the Loan Documents.

**4.12. Future Advances, Revolving and Open-End Loans, and Other Debts.** It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other

Indebtedness, being defined as any and all obligations and liabilities, direct or contingent, of the Mortgagor to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancing of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

IN TESTIMONY WHEREOF, Mortgagor has caused this instrument to be executed on its behalf by its duly authorized officers on the day and year first above written.

**4.13** The terms and conditions of that certain agreement between the City of Huntsville and Arbours at Moores Mill, LLC, dated \_\_\_\_\_ and adopted and approved by the Huntsville City Council pursuant to Resolution No. 23-\_\_\_\_\_ are incorporated herein as fully and to the same extent as though fully set forth therein  
MORTGAGOR:

Mortgagor:

Arbours at Moores Mill, LLC,  
an Alabama limited liability company

By: Moores Mill MM, LLC  
an Alabama limited liability company  
Its Managing Member

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF ALABAMA )

COUNTY OF MADISON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of Moores Mill MM, LLC, an Alabama limited liability company, which is the Managing Member of Arbours at Moores Mill, LLC is signed to the foregoing promissory note, and who is known to me, acknowledged before me on this day that, being informed of the contents of such promissory note, he as such officer and with full authority to act on behalf of said entity, executed the same voluntarily for and as the act of said entity in its capacity as the \_\_\_\_\_ of Moores Mill MM, LLC, an Alabama limited liability company, which is the Managing Member of Arbours at Moores Mill, LLC, an Alabama limited liability company.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

(SEAL)

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A  
TO MORTGAGE AND SECURITY AGREEMENT**

**Legal Description**

Lot 1A, Arbours at Moores Mill, according to the plat thereof recorded in Plat File # 2021-19664, of the record in the Office of the Judge of Probate, Madison County, Alabama.

PIN: 152525

PARCEL: 13-03-08-0-001-016.001

**EXHIBIT E**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Declaration of Land Use Restrictive Covenants**  
**for Huntsville, Alabama HOME Program**

STATE OF ALABAMA     )

COUNTY OF MADISON    )

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR HUNTSVILLE, ALABAMA HOME PROGRAM

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR HUNTSVILLE, ALABAMA HOME PROGRAM, dated as of November 16, 2023, by and between Arbours at Moores Mill, LLC, an Alabama limited liability company (“Owner”) and City of Huntsville, Alabama, a municipal corporation (“City”). Certain capitalized terms are defined in Section 1 of this Declaration.

WITNESSETH:

WHEREAS, the OWNER is or shall be the OWNER of the Project, an affordable multi-family development located or to be located on lands in the City of Huntsville, Alabama, County of Madison, State of Alabama, more particularly described in Exhibit A hereto, known as or to be known as Arbours at Moores Mill and

WHEREAS, the OWNER has represented to City in the Application that OWNER shall lease the Units in the Project to Low-Income Tenants as indicated in Section 4 of this Declaration; and

WHEREAS, the OWNER agrees to maintain the HOME Program rent and income restrictions for the Affordability Period; and

WHEREAS, the HOME Program requires that the OWNER and City execute, deliver and record this Declaration in the real estate records of the Probate Office of the county in which the Project is located in order to create certain covenants running with the Project for the purpose of enforcing the requirements of the HOME Program, the Project Occupancy Restriction, and the Building Occupancy Restriction by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the OWNER, by this Declaration, intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the Declaration Term and are binding upon all subsequent OWNERS of the Project for such term, and are not merely personal covenants of the OWNER; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the parties hereto agree as follows:

## SECTION 1- DEFINITIONS

The following terms shall be defined as follows:

- a) "Act" means the Cranston-Gonzalez National Affordable Housing Act of 1990, as from time to time amended and the regulations relating thereto.
- b) "Affordability Period" means the 20-year period commencing upon the Completion of the Project.
- c) "Application" means OWNER's HOME Program Application to the City of Huntsville, Alabama dated November 12, 2020.
- d) "Area Median Income" means "area median income" as determined by the Secretary of HUD with adjustments for smaller or larger households.
- e) "Building" means any building that is or is to be part of the Project.
- f) "City" means the City of Huntsville, Alabama, a municipal corporation, and any successor to its function.
- g) "Completion of the Project" means the date of issuance of both the permanent certificate(s) of occupancy for the entire Project and certificates from the OWNER's architect that the Project has been built to code and according to the plans, drawings, and specifications which are approved in writing by City.
- h) "Declaration" means this Declaration of Land Use Restrictive Covenants for Huntsville HOME Program as from time to time amended, restated or supplemented.
- i) "Declaration Term" means the term of this Declaration, namely, the Affordability Period.
- j) "HOME Assisted Unit" means four (4) of the Project's eighty (80) units assisted and occupied by Low Income Tenants. The HOME Assisted Units will be designated as "floating" units. Floating units are changed to maintain conformity with the requirements during the Affordability Period so that the total number of housing units remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME Assisted Unit.
- k) "HOME Program" means the federal housing program created by Title II of the Granston-Gonzalez National Affordable Housing Act of 1990, as from time to time amended, and applicable regulations including, without limitation 24 CFR Parts S8 and 92, and all amendments thereto.

l) "HUD" means the United States Department of Housing and Urban Development and any successor thereto.

m) "Low-Income Requirement" means the requirement that tenants of Low-Income Units have incomes not exceeding the maximum income set out in Section 4 of this Declaration and made applicable by the Project Occupancy Restriction.

n) "Low-Income Tenant" means an individual or household whose income satisfies the Low- Income Requirement.

o) "Low-Income Unit" means a Unit as to which HOME Program funds were expended at any time during the Affordability Period and includes all Units that must be leased to a Low-Income Tenant to satisfy the Project Occupancy Restriction.

p) "OWNER" means Arbours at Moores Mill, LLC, an Alabama limited liability company, and any person now or hereafter owning any interest (other than solely as a creditor) in the Project or any portion thereof.

q) "Project" means the certain tract of land in the City of Huntsville, County of Madison, State of Alabama, more particularly described in Exhibit A hereto, and an affordable multi-family development located or to be located on such land, known as or to be known as Arbours at Moores Mill, including the Buildings.

r) "Project Occupancy Restriction" means the obligation of the OWNER to restrict occupancy of a percentage of the Units in the Project to satisfy Section 4(a) of this Declaration.

s) "Project Rent Restriction " means the obligation of the OWNER that rents charged Low- Income Tenants in Low-Income Units shall not exceed the maximum rent that may be imposed on occupancy of such Unit, pursuant to 24 CFR Section 92.252.

t) "Transfer", and any derivation thereof, includes a sale or exchange other than a technical assignment of title pursuant to a mortgage (but a foreclosure of a mortgage is a "transfer").

u) "Unit" means a residential apartment unit/single household home of the Project as determined in accordance with the HOME Program.

All words and phrases defined in the HOME Program and HUD regulations pertaining thereto and/or promulgated thereunder shall have the same meanings in this Declaration.

## SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE PROJECT

a) Upon execution and delivery by the parties hereto, the OWNER shall cause this Declaration and all amendments hereto to be recorded and filed in the real estate records in the Probate Office of the county in which the Project is located and shall pay all fees and

charges incurred in connection therewith. Prior to recording, the OWNER shall provide City with an executed copy of this Declaration. Upon recording, the OWNER shall provide City with the executed original of the recorded Declaration showing the Probate Office's time and date stamp and all pertinent recording data.

b) The covenants contained in this Declaration (i) shall be and are covenants running with the Project, encumbering the Project for the Declaration Term, binding upon the OWNER's successors in title and all subsequent OWNERS and operators of the Project or of any part thereof, (ii) are not merely personal covenants of the OWNER, and (iii) shall bind the OWNER and its successors and assigns during the Declaration Term. All parties hereto hereby agree that any and all requirements of the laws of the State of Alabama to be satisfied in order for the provisions of this Declaration to constitute valid, binding and enforceable restrictive covenants running with the Project shall be deemed to be satisfied in full or in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the Project.

c) For the Declaration Term, each and every lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such lease, deed or other instrument hereafter executed conveying the Project or any portion thereof provides that such conveyance is subject to this Declaration.

### SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The OWNER hereby represents, covenants and warrants to City as follows:

a) The OWNER is a (i) Limited Liability Company, duly organized, existing and in compliance under the laws of the State of Alabama, and is qualified to transact business under the laws of the State of Alabama, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration.

b) The execution, delivery and performance of this Declaration by the OWNER (i) will not violate any provision of law, rule or regulation, or any order of any court or other agency or governmental body and (ii) will not violate any provision of any indenture agreement, mortgage, mortgage note, or other instrument to which the OWNER is a party or by which it or the Project is bound.

c) The OWNER has good and marketable fee simple title to the Project and the covenants imposed on the Project by this Declaration are not inconsistent with the terms of any lien, mortgage, or other encumbrance or restrictive covenant, easement or servitude.

d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the OWNER, threatened against or affecting the OWNER or the Project, or any of the

OWNER's properties or rights, which, if adversely determined, would materially impair the OWNER's right to carry on business substantially as now conducted (and as contemplated by this Declaration) or which would materially and adversely affect its financial condition or which would impair the use of the Project as contemplated by this Declaration .

e) Throughout the Affordability Period, the Project shall constitute a qualified low-income housing project, as required in Section 4 of this Declaration.

f) Each Unit shall, throughout the Affordability Period, contain complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy or transitional housing for the homeless under the HOME Program) which are to be used on other than a transient basis.

g) During the Affordability Period, each Low-Income Unit shall be suitable for occupancy and shall be used only other than on a transient basis.

h) The OWNER shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Affordability Period unless required by law.

i) If during the Affordability Period the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the OWNER shall use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration. If the Buildings or any Units are damaged, destroyed, acquired for public use, or condemned and not rebuilt, the Project Occupancy Restriction shall be applied to the remaining Units in the Project as though no reduction in the total number of Units had occurred.

j) The OWNER has not executed, and shall not execute, any other agreement with provisions contradictory to, or in opposition to this Declaration. This Declaration is paramount and controlling as to the rights and obligations herein set forth and supersedes any other requirements in conflict herewith.

k) Throughout this Declaration Term, the OWNER shall not evict or terminate the tenancy of a Low-Income Tenant other than for good cause or increase gross rent with respect to a Low-Income Unit other than as permitted under the HOME Program.

#### SECTION 4 - EXTENDED LOW-INCOME HOUSING COMMITMENT

In order to satisfy the Project Occupancy Restriction, the OWNER shall assure that throughout the Affordability Period and by no later than the last day of the first year of the Affordability Period:

From the date of the commencement of the Affordability Period until its



expiration, the four (4) HOME Assisted Units shall be leased to households under 50% of Area Median Income.

a) The Project Rent and Income Restrictions are applied on a Project basis.

b) The determination of whether a Low-Income Tenant meets the Low-Income Requirement shall be made by the OWNER at least annually on the basis of the then current income of such Low-Income Tenant and the guidelines established by the HOME Program.

#### SECTION 5 - ENFORCEMENT OF OCCUPANCY RESTRICTIONS

a) The OWNER shall permit, during normal business hours and upon reasonable notice, any duly authorized representative or designated agent of City to inspect any books and records of the OWNER regarding the Project with respect to the incomes of Low-Income Tenants or which pertain to compliance with the occupancy restrictions specified in this Declaration.

b) The OWNER shall submit any other information, documents or certifications requested by City which City shall deem necessary to substantiate the OWNER's continuing compliance with the provisions of the Project Occupancy Restriction and any other Occupancy Restrictions specified in this Declaration.

#### SECTION 6 - ENFORCEMENT TO HOME PROGRAM RESTRICTIONS

a) The OWNER covenants that it shall not knowingly take or permit any action that would result in a violation of the requirements of the HOME Program, or this Declaration. Moreover, OWNER covenants to take any lawful action (including amendment of this Declaration as may be necessary) to comply fully with the HOME Program, and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by HUD or other governmental agency from time to time pertaining to OWNER's obligations under the HOME Program and affecting the Project.

b) The OWNER and City each acknowledge that the primary purpose for requiring compliance by the OWNER with the restrictions provided in this Declaration is to assure compliance of the Project and the OWNER with the HOME Program, AND BY REASONS THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING FUNDING UNDER THE HOME PROGRAM FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT CITY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION. The OWNER hereby further specifically acknowledges that the beneficiaries of the OWNER's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default

hereunder.

c) The OWNER hereby agrees that the representations and covenants set forth herein may be relied upon by City and all persons interested in Project compliance under the HOME Program and this Declaration.

#### SECTION 7 - MISCELLANEOUS

a) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

b) Notices. All notices to be given pursuant to this Declaration shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE CITY	City of Huntsville, Alabama Department of Community Development P. O. Box 308 Huntsville, AL 35804
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TO THE OWNER	Arbours at Moores Mill, LLC 242 Inverness Center Drive Birmingham, AL 35242
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TO THE INVESTOR MEMBER	Wells Fargo Bank, National Association Winston-Salem Loan Center 100 North Main Street, 10 <sup>th</sup> Floor MAC D4001-105 Winston-Salem, NC 27101
------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------

City and OWNER may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

c) Amendment. The OWNER agrees that it shall take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the HOME Program and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the HOME Program.

d) Governing Law. This Declaration shall be governed by the laws of the State of Alabama and, where applicable, the laws of the United States of America.

e) Survival of Obligations. The obligations of the OWNER as set forth herein and in the Application shall survive the funding of the HOME Program loan and shall not be deemed to terminate or merge with the funding of the loan.

f) Recovery of Attorney's Fees. If City shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the OWNER's obligations, under this Declaration, the OWNER shall reimburse City for those fees and other expenses within ten (10) days of receipt of written demand therefor.

g) Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

h) Construction. This Declaration shall be construed and enforced to preserve the purposes of the HOME Program.

i) Other Declaration. This Declaration is in addition to, and is not in lieu of, any other declaration of restrictive covenants (the "Other Declaration") which the OWNER may have heretofore executed, or may simultaneously herewith or hereafter execute, with respect to the Project. The OWNER must abide by this Declaration and by the Other Declaration, if any, each of which stands on its own.

j) HUD Rider to Restrictive Covenants. The terms and conditions of the HUD Rider to Restrictive Covenants attached hereto are incorporated herein and made a part of this Declaration.

IN WITNESS WHEREOF, the parties have caused this Declaration to be signed by their respective duly authorized representatives, as of the day and year first written above.

**ARBOURS AT MOORES MILL, LLC**  
an Alabama limited liability company

By: Moores Mill MM, LLC  
an Alabama limited liability company  
its Managing Member

By: \_\_\_\_\_  
Samuel T. Johnston,  
Authorized Member

**CITY OF HUNTSVILLE, ALABAMA**

By: \_\_\_\_\_  
Tommy Battle, Mayor  
City of Huntsville, Alabama

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I \_\_\_\_\_, a Notary Public, in and for said County and State, hereby certify that Samuel T. Johnston, Authorized Member of Moores Mill MM, LLC, an Alabama limited liability company, which is the Managing Member of Arbours at Moores Mill, LLC, an Alabama limited liability company, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he as such authorized agent and with full authority executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Signature

STATE OF ALABAMA )  
 ) SS:  
COUNTY OF MADISON )

I, the undersigned, a Notary public in and for said County in said State, hereby certify that Tommy Battle whose name as Mayor of City of Huntsville, Alabama, a public corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, on the day the same bears date.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Signature

**EXHIBIT F**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Occupancy and Rent Restrictions**

If the Participant has agreed to further restrict the occupancy of the HOME-assisted rental units beyond the minimum requirements of the City, the occupancy restrictions for the Project are indicated in the charts below.

**Occupancy Restrictions**

**No occupancy restriction beyond the CITY's minimum requirements has been selected. The 4 HOME-assisted units are restricted to seniors, 62 and older, earning 50% or less of AMI. The HOME-assisted units will be evenly distributed throughout the unit sizes.**

**Rent Floor Limits**

The rent floor limits for a project are the HOME rents which are in effect at the time of project commitment. The following table includes the current rent limits for the Project. Regardless of changes in fair market rents and in median income over time, the rents for the Project are not required to be lower than the rent floor limits.

**During the Affordability Period**

UNIT SIZE	50% AMI	RENT LIMIT	60% AMI
	Low HOME Rent		High HOME Rent
1 bedroom	1		31
2 bedroom	3		45

**Exhibit G**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Award Information**

**Award Amount:**     **\$420,000 Loan at 2.0%, 40 Year Term.** The first payment of the lesser of **\$25,685.82** or 50% of surplus cash flow shall be due the beginning of the first quarter 12 months after the Project is placed in service. Future annual payments of the lesser of **\$25,685.82** or 50% of surplus cash flow will be due annually from the date of the first payment until all deferred developers fee is paid. Upon final payment of deferred developers fee, the annual payment will be the lesser of \$25,685.82 or 75% of the surplus cash flow until the loan matures.

**Participant Name:**             Arbours at Moores Mill, LLC

**Participant Address:**         Arbours at Moores Mill, LLC  
242 Inverness Center Drive  
Birmingham, AL 352542

**Participant Role:**             Project Owner

**Federal Tax ID:**             85-3895375

**Project Information**

**Project Name:**             Arbours at Moores Mill  
**Project Address:**         100 Marcus Byers Drive NE  
Huntsville, AL 35811

**Project Type:**             Multifamily Rental

**Activity Type:**             New Construction

**Funding Type:**             LIHTC/HOME

**Est. Development Cost:**   \$27,320,399.00

**Total # of Units:**         80

**# of HOME-Assisted Units:** 4

**Affordability Period:**     20 years, or, if longer, until the Mortgage is paid off

**Special Needs Unit Type(s):** Senior

**EXHIBIT H**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**U.S. Department of Housing and Urban Development**  
**Subordination Agreement – Public**



## Subordination Agreement - Public

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 2502-0598  
(Exp. 04/30/24)

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Project Name: **Arbours at Moores Mill**  
HUD Project No: **062-35817**

THIS SUBORDINATION AGREEMENT ("Agreement") is entered into this \_\_\_ day of **December, 2023** by and among (i) **MERCHANTS CAPITAL CORP., an Indiana corporation** ("Senior Lender"), (ii) **CITY OF HUNTSVILLE, ALABAMA, a municipal corporation** ("Subordinate Lender"), and (iii) **ARBOURS AT MOORES MILL, LLC, an Alabama limited liability company, whose address is 242 Inverness Center Drive, Birmingham, Alabama 35242** ("Borrower").

### Recitals

**WHEREAS**, Borrower is the owner of that certain **Eighty (80)** unit residential rental development known as "**Arbours at Moores Mill**" ("**Project**"), located at **100 Marcus Byers Direve Northeast, Huntsville, Alabama 35811**. Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security Instrument**"), covering the property described in **Exhibit A** attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

**WHEREAS**, Borrower has requested Senior Lender to permit Subordinate Lender to make a subordinate loan to Borrower in the amount of **Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00)** ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

**WHEREAS**, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project,

including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: Handbooks, guides, notices, and mortgagee letters are available on "HUDCLIPS," at [www.hud.gov](http://www.hud.gov).

**NOW, THEREFORE**, in order to induce Senior Lender to permit Subordinate Lender to make the Subordinate Loan to Borrower and to place a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

**1. Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

(a) **"Affiliate"** is any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) **"Bankruptcy Proceeding"** means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) **"Borrower"** means all entities identified as "Borrower" in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term "Borrower" shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.

(d) **"Business Day"** means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.

(e) **"Covenant Event of Default"** is defined in the Senior Security Instrument.

(f) **"Entity"** means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

(g) **"Monetary Event of Default"** is defined in the Senior Security Instrument.

(h) **"Non-Project Sources"** means any funds that are not derived from Project Sources.

(i) **"Project Sources"** means the Mortgaged Property (as defined in the Senior Security Instrument), any proceeds of the Senior -Indebtedness, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior Indebtedness.

(j) **"Senior Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Senior Lender under or in connection with the Senior Loan Documents.

(k) **"Senior Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.

(l) **"Senior Loan Documents"** means the Senior Note, the Senior Security Instrument, and the Regulatory Agreement between Borrower and HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness, as identified in Schedule A.

(m) **"Senior Security Instrument Default"** means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the Senior Security Instrument.

(n) **"Subordinate Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

(o) **"Subordinate Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement.

(p) **"Subordinate Loan Documents"** means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as identified in Schedule B. The terms Subordinate Note and Subordinate Mortgage are defined in Schedule B.

(q) **"Subordinate Loan Enforcement Action"** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness

or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(r) "**Subordinate Mortgage Default**" means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.

(s) "**Surplus Cash**" is defined herein to mean the same as that term is defined in the Regulatory Agreement between Borrower and HUD.

## 2. **Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the Senior Security Instrument) to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Senior Lender agrees that the existence of the Subordinate Loan does not create a basis for default of the Senior Indebtedness. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

## 3. **Borrower's and Subordinate Lender's Representations and Warranties.**

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make the following representations and warranties to Senior Lender:

(a) **Subordinate Loan Documents.** The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) **Terms of the Subordinate Loan.** The original principal amount of the Subordinate Note is **\$420,000.00**. Interest on the Subordinate Note accrues monthly at the rate of **Two and 00/100 percent (2.00%)** per annum. The Subordinate Note is due and payable in full on **the date that is forty (40) years after the Project is placed in service**, ("Maturity"). The Maturity term of the Subordinate Note does not end before the maturity term of the Senior Note, unless the Subordinate Note is forgivable as set forth below and Borrower satisfies all requirements in the Subordinate Loan Documents to result in the Subordinate Note being eligible for forgiveness. The principal of the Subordinate Note will have a balloon principal payment of **the outstanding principal balance plus accrued and unpaid interest** due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make payments as

follows: **the first payment of the lesser of \$25,685.82 or 50% of Surplus Cash shall be due the beginning of the first quarter 12 months after the Project is placed in service. Future annual payments of the lesser of \$25,685.82 or 50% of Surplus Cash will be due annually from the date of the first payment until all deferred developer's fee is paid. Upon final payment of deferred developer's fee, the annual payment will be the lesser of \$25,685.82 or 75% of Surplus Cash until the loan matures**, subject to Section 3(c) immediately below.

(c) **Required HUD Language in Subordinate Note.** The Subordinate Note contains or incorporates the following provisions:

“As long as HUD is the insurer or holder of the Senior Note (as such term and other capitalized terms are defined in the form Subordination Agreement, HUD-92420M) on FHA Project No. **062-35817**, the following provisions (“**HUD Provisions**”) shall be in full force and effect:

- (1) any payments due under the Subordinate Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;
- (2) no prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD.
- (3) this Subordinate Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;
- (4) interest on the Subordinate Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;
- (5) Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Subordinate Note;
- (6) the terms and provisions of this Subordinate Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Subordinate Note may not be

modified or amended without the written consent of HUD; and

(7) in the event of any conflict between the terms of the Subordinate Note and the HUD Provisions, the terms of the HUD Provisions shall control.”

**(d) Relationship of Borrower to Subordinate Lender.** Subordinate Lender is not an Affiliate of Borrower.

**(e) Subordinate Loan Documents.** Borrower certifies that the executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

**(f) Senior Loan Documents.** The executed Senior Loan Documents are the same forms as approved by HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

#### **4. Deliveries.**

Borrower shall submit the following items to Senior Lender and HUD at closing:

**(a) Title Evidence.** Evidence of title (title policy or title policy endorsement, as appropriate) insuring the lien of the Senior Security Instrument which insures that (i) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (ii) this Agreement has been recorded among the applicable land records.

**(b) Loan Documents.** A complete set of the Subordinate Loan Documents, including this Subordination Agreement.

#### **5. Terms of Subordination.**

**(a) Agreement to Subordinate.** Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums

advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

**(b) Subordination of Subrogation Rights.** Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

**(c) Payments Before Senior Security Instrument Default.** Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

**(d) Payments After Senior Security Instrument Default.** Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of this Section 5(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.** If, after Subordinate Lender receives a default notice from Senior Lender in accordance with subsection (d) above, Subordinate Lender receives any payments under the Subordinate Loan Documents (other than payments permitted under subsection (d)

above), Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) Agreement Not to Commence Bankruptcy Proceeding.**

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any Bankruptcy Proceeding with respect to Borrower, without Senior Lender's prior written consent.

**6. Default Under Subordinate Loan Documents.**

**(a) Notice of Default and Cure Rights.** Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below.

**(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.**

**(1)** If a covenant Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not, for a period of one hundred eighty (180) days after giving notice of such Subordinate Mortgage Default to Senior Lender and HUD (the "**Standstill Period**"), commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without



Senior Lender's prior written consent. During the Standstill Period, Subordinate Lender agrees to use best efforts to resolve the Subordinate Mortgage Default, in an effort to avoid the pursuit of available remedies by the Subordinate Lender. After the expiration of the Standstill Period and in the event Subordinate Lender forecloses on the Mortgaged Property, the purchaser must comply with HUD's Previous Participation regulations and processes, Transfer of Physical Asset requirements, and Program Obligations before it can take title to the Mortgaged Property.

**(2)** Subordinate Lender further agrees that if a monetary Subordinate Mortgage Default occurs and is continuing, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent. The preceding prohibition on foreclosure for a monetary Subordinate Mortgage Default excludes the acceleration of any part or all of the Subordinate Indebtedness resulting from a covenant Subordinate Mortgage Default.

**(3)** Nothing in this subsection (b) shall (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce covenants and agreements of Borrower relating to income, rent or affordability restrictions.

## **7. Default Under Senior Loan Documents.**

**(a) Notice of Default and Cure Rights.** Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under

the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

**(b) Cross Default.** Subordinate Lender certifies that the Subordinate Loan Documents do not contain a cross default provision. Notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

## **8. Conflict.**

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

## **9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

**(a) Protection of Security Interest.** Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

**(b) Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other

casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(1) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) in the manner determined by Senior Lender in its sole discretion consistent with the Senior Loan Documents; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

(c) **No Modification of Subordinate Loan Documents.** Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

## **10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness; Transfer of Physical Assets.**

(a) Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided however, there shall be no modification of the Senior Loan

- Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.
- (b)** Subordinate Lender agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness in accordance with Program Obligations (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.
- (c)** Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the Senior Indebtedness.
- (d)** Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if the Subordinate Note is due, and there are no Surplus Cash funds or Residual Receipts (if applicable) available for repayment, and the Senior Indebtedness has not been repaid in full. (The parties agree that distributions of Residual Receipts must be approved by HUD and can only be approved by the terms of a written agreement between HUD and the Borrower).
- (e)** Subordinate Lender further agrees that the Subordinate Indebtedness is assumable when a sale or transfer of physical assets occurs and the Senior Indebtedness remains in place.

## 11. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

## 12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which Senior Lender or Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two Business Days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER: **Merchants Capital Corp.**  
**410 Monon Blvd., 5th Floor**  
**Carmel, Indiana 46032**  
**Attention: FHA Asset Management**

With a copy to: U.S. Department of Housing and Urban Development  
 Director - Office of Multifamily Asset Management  
 Room 6160  
 451 Seventh Street, S.W.  
 Washington, DC 20410

SUBORDINATE LENDER: **The City of Huntsville, Alabama**  
**P.O. Box 308**  
**Huntsville, Alabama 35804**  
**Attention: Department of Community**  
**Development**

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

## 13. General.

**(a) Assignment/Successors.** This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender.

**(b) No Partnership or Joint Venture.** Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of any other party hereto.

**(c) Senior Lender's and Subordinate Lender's Consent.** Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances; UCC Financing Statements.** Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

**(e) Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.** This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located, except, so long as the Senior Indebtedness is insured or held by HUD, and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

**(g) Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 5 hereof; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement. Notwithstanding the foregoing, in the event the Senior Indebtedness is refinanced or a transfer of physical assets occurs, the term of this Agreement shall continue and the Subordinate Indebtedness and Subordinate Loan Documents shall be subordinate to any such indebtedness related to the refinanced or transferred loan as provided in Section 10 above.

**(i) Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

This Subordination Agreement – Public (HUD-92420M) is made, presented and delivered for the purpose influencing an official action of the Federal Housing Administration, and of the Assistant Secretary for Housing/Federal Housing Commissioner, and may be relied upon by the Assistant Secretary/Commissioner as a true statement of the facts contained herein. **WARNING:** It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For detail, see Title 18 U.S. Code, Sections 1001 and 1010.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

[Remainder of page intentionally blank; signature pages follow]









**SCHEDULE A – LIST OF SENIOR LOAN DOCUMENTS**

1. Note (Multistate) in the original principal amount of \$6,110,000.00 executed by Borrower and payable to Senior Lender, dated December 1, 2023;
2. Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement executed by Borrower in favor of Senior Lender dated December 1, 2023, and recorded in the Probate Court of Madison County, Alabama (the “Recorder’s Office”);
3. Regulatory Agreement for Multifamily Projects by and between Borrower and HUD dated December 1, 2023, and recorded in the Recorder’s Office;
4. Uniform Commercial Code Financing Statements naming Borrower as debtor and naming Senior Lender as secured party, to be filed in Recorder’s Office and with the Alabama Secretary of State; and
5. Any and all other documents, agreements, certificates and certifications executed and delivered in connection with the Senior Loan from Borrower to Senior Lender in the amount of \$6,110,000.00 (together with the documents listed in items 1 through 4 above).

## **SCHEDULE B – LIST OF SUBORDINATE LOAN DOCUMENTS**

1. Promissory Note in the original principal amount of \$420,000.00 executed by Borrower and made payable to Subordinate Lender dated December \_\_, 2023 (the “**Subordinate Note**”);
2. Mortgage and Security Agreement executed by Borrower in favor of Subordinate Lender dated December 1, 2023, and recorded in the Recorder’s Office (the “**Subordinate Mortgage**”);
3. Agreement Between the City of Huntsville, Alabama and Arbours At Moores Mill, LLC for HOME Investment Partnership (HOME) Funds by Borrower and Subordinate Lender, dated December \_\_, 2023;
4. Declaration of Land Use Restrictive Covenants for Huntsville, Alabama HOME Program by and between Borrower and Subordinate Lender, dated December \_\_, 2023, and recorded in the Recorder’s Office;
5. Uniform Commercial Code Financing Statements naming Borrower as debtor and naming Subordinate Lender as secured party, to be filed in Recorder’s Office and with the Alabama Secretary of State; and
6. Any and all other documents, agreements, certificates and certifications executed and delivered in connection with the Subordinate Loan from Borrower to Subordinate Lender in the amount of \$420,000.00 (together with the documents listed in items 1 through 5 above).

**EXHIBIT A: LEGAL DESCRIPTION**

Lot 1A, Arbours At Moores Mill, according to the plat thereof recorded in Plat File # 2021-19664, of the records in the Office of the Judge of Probate, Madison County, Alabama.

**EXHIBIT I**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**Disbursement Agreement**

## **DISBURSEMENT AGREEMENT**

**THIS DISBURSEMENT AGREEMENT** (this “**Disbursement Agreement**”) is made as of December \_\_, 2023, by and among MERCHANTS CAPITAL CORP., an Indiana corporation (“**Lender**”), ARBOURS AT MOORES MILL, LLC, an Alabama limited liability company (“**Borrower**”), UNITED BANK, an Alabama banking corporation (“**CMF Lender**”), CITY OF HUNTSVILLE, ALABAMA, a municipal corporation (“**HOME Lender**”) and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (“**Equity Bridge Lender**”).

### **RECITALS**

A. Borrower intends to construct a multifamily housing project known as Arbours at Moores Mill, FHA Project No. 062-35817 located in Madison County, Alabama (the “**Project**”), which is more particularly described on Exhibit “A” attached hereto and by reference made a part hereof.

B. Construction of the Project is being financed in part by Borrower obtaining a loan from Lender in the original principal amount of \$6,110,000.00 (the “**Mortgage Loan**”) to be insured under Section 221(d)(4) of the National Housing Act, as amended, by the U.S. Department of Housing and Urban Development (“**HUD**”) and to be disbursed pursuant to that certain Building Loan Agreement (Form HUD-92441M) dated of even date herewith, by and between Borrower and Lender (the “**Building Loan Agreement**”) and this Disbursement Agreement. The documents and agreements controlling, evidencing and securing the Mortgage Loan are hereinafter referred to as the “**Mortgage Loan Documents**.” The mortgageable costs of construction of the Project, as determined by HUD, total \$[\_\_\_\_\_] (the “**Mortgageable Costs of Development**”). The non-mortgageable costs of construction of the Project, as determined by HUD, total \$[\_\_\_\_\_] (the “**Non-Mortgageable Costs of Development**”). The Mortgageable Costs of Development together with the Non-Mortgageable Costs of Development are collectively referred to as the “**Costs of Development**”. Attached hereto as Exhibit “B” and incorporated herein by this reference is a sources and uses and projected draw schedule reflecting the anticipated flow of funds for the Costs of Development (as it may be subsequently modified in accordance with the applicable Program Obligations (as defined below), is referred to hereinafter as the “**Sources and Uses**”). Initial endorsement of the Mortgage Loan by HUD for mortgage insurance is scheduled to occur on December \_\_, 2023 (the “**Initial Closing**”).

C. At Initial Closing, Pierce Ledyard Johnston, PC, as agent for Stewart Title Guaranty Company (“**Escrow Agent**”), is responsible for issuing to Lender and HUD as insureds, a lender’s title insurance policy (the “**Title Policy**”) disbursing funds in accordance with the terms and provisions of this Disbursement Agreement.

D. Doug Hollyhand Realty, Inc., an Alabama corporation (“**Contractor**”), and Borrower entered into that certain Construction Contract (HUD-92442M) dated of even date herewith, for the construction of the Project (the “**Construction Contract**”).

E. Intentionally Omitted.

F. Equity Bridge Lender is obligated to advance equity bridge loan proceeds to Borrower in an amount not to exceed \$[13,381,108.00] (the “**Equity Bridge Loan**”) upon the satisfaction of certain conditions pursuant to (i) that certain Construction Loan Agreement by and between Equity Bridge Lender and Borrower and (ii) certain other documents by and between Equity Bridge Lender and Borrower (collectively, the “**Equity Bridge Loan Documents**”).

G. CMF Lender is obligated to advance loan proceeds to Borrower in an amount not to exceed \$250,000.00 (the “**Subordinate Loan**”) upon the satisfaction of certain conditions pursuant to (i) that certain Loan Agreement by and between CMF Lender and Borrower and (ii) certain other documents by and between CMF Lender and Borrower (collectively, the “**CMF Loan Documents**”).

H. HOME Lender is obligated to advance loan proceeds to Borrower in an amount not to exceed \$420,000.00 (the “**Home Loan**”) upon the satisfaction of certain conditions pursuant to (i) that certain *Agreement Between the City of Huntsville, Alabama and Arbours at Moores Mill, LLC for Home Investment Partnership (HOME) Funds* by and between HOME Lender and Borrower and (ii) certain other documents by and between HOME Lender and Borrower (collectively, the “**HOME Loan Documents**”).

I. Wells Fargo Bank, National Association, a national banking association (“**Tax Credit Investor**”), is obligated to contribute installments of equity to Borrower in the aggregate amount of \$[20,013,699.00] (collectively, the “**Tax Credit Equity**”) pursuant to and in accordance with the terms and conditions of the Amended and Restated Operating Agreement of Borrower dated as of December \_\_, 2023, (the “**Operating Agreement**”) of which a portion is required by Borrower to pay Borrower's portion of the Mortgageable Costs of Development and Non-Mortgageable Costs of Development, as applicable.

J. Participation by Borrower and its members in the Project requires their compliance with applicable HUD statutes, regulations, handbooks, guides and other HUD Insurance Program requirements more particularly defined in the security instrument securing the Mortgage Loan as the “**Program Obligations**”.

K. In order to provide for the orderly administration of the disbursement of the proceeds of the Mortgage Loan, Tax Credit Equity, the CMF Loan, the HOME Loan and the Equity Bridge Loan (collectively the “**Project Funds**”), the parties have agreed to execute this Disbursement Agreement.

**NOW, THEREFORE**, in consideration of the covenants and commitments in this Disbursement Agreement, the parties agree as follows:

1. **Mortgage Loan Proceeds.** Proceeds disbursed or to be disbursed under the Mortgage Loan are referred to as “**Mortgage Loan Proceeds.**” At the time of the Initial Closing, Lender shall disburse, and HUD shall insure, a disbursement of Mortgage Loan Proceeds in an amount approved by HUD in accordance with Section 8 below. Following Initial Closing, Lender shall disburse Mortgage Loan Proceeds in connection with each Approved Draw Request (as



defined below), subject to the satisfaction of the requirements of the Building Loan Agreement and this Disbursement Agreement.

2. **Equity.** Borrower shall cause Tax Credit Investor to contribute Tax Credit Equity to Borrower pursuant to the terms of the Operating Agreement. The timing and amount of capital contributions from Tax Credit Investor are subject to the applicable provisions of the Operating Agreement. An initial payment of Tax Credit Equity in an amount approved by HUD in accordance with Section 8 below has been contributed to Borrower on or before Initial Closing. The Additional Tax Credit Equity Deposits (as defined below) shall be used to pay Costs of Development in accordance with the terms of this Disbursement Agreement.

3. Pursuant to and subject to satisfaction of the conditions of the Operating Agreement, Borrower shall cause Tax Credit Investor to contribute additional capital contributions (“**Additional Tax Credit Equity Deposits**”) to Borrower as described on Exhibit ”C” which is attached hereto and by reference made a part hereof. Each Additional Tax Credit Equity Deposit shall be applied in accordance with the terms and provisions of the Operating Agreement, it being acknowledged and agreed by Borrower and Lender that certain portions of the Non-Mortgageable Costs of Development shall be deposited in reserve(s) pursuant to the Operating Agreement and in accordance with Section 9 below.

4. **Subordinate Loan Proceeds.**

(a) CMF Lender has agreed to make the CMF Loan to Borrower. CMF Loan proceeds disbursed or to be disbursed under the CMF Loan Documents are referred to as “**CMF Loan Proceeds.**” The CMF Loan will be funded in accordance with the CMF Loan Documents.

(b) HOME Lender has agreed to make the HOME Loan to Borrower. HOME Loan proceeds disbursed or to be disbursed under the HOME Loan Documents are referred to as “**HOME Loan Proceeds.**” The HOME Loan will be funded in accordance with the HOME Loan Documents.

5. **Equity Bridge Loan Proceeds.** Equity Bridge Lender has agreed to advance Equity Bridge Loan proceeds in accordance with the terms and provisions of the Equity Bridge Loan Documents. Equity Bridge Loan proceeds disbursed or to be disbursed under the Equity Bridge Loan Documents are referred to as “**Equity Bridge Loan Proceeds.**” The Equity Bridge Loan Proceeds will be funded in accordance with the Equity Bridge Loan Documents.

6. **Funding of Approved Draws.** Each Approved Draw Request is to be fully funded from Mortgage Loan Proceeds, Equity Bridge Loan Proceeds, CMF Loan Proceeds, HOME Loan Proceeds, or Tax Credit Equity upon satisfaction of the requirements set forth in the applicable loan documents or Operating Agreement. Borrower is obligated to fund or arrange funding for any shortfalls in the event that, for any reason, one of the other sources is not immediately available when needed to supplement Mortgage Loan Proceeds and fully fund an Approved Draw Request.

7. **Sources.** The following sources of Project Funds shall be made available and used to construct/rehabilitate the Project:

- (a) Mortgage Loan Proceeds: \$[6,110,000.00]
- (b) Equity Bridge Loan Proceeds: \$[13,381,108.00]
- (c) Tax Credit Equity: \$[20,013,699.00]
- (d) CMF Loan Proceeds: \$[250,000.00]
- (e) HOME Loan Proceeds: \$[420,000.00]

8. **Initial Draw.** Project Funds for the initial draw in the total amount of \$[ ] shall be funded as follows:

- (a) Mortgage Loan Proceeds: \$[ ]
- (b) Equity Bridge Loan Proceeds: \$[ ]
- (c) Tax Credit Equity: \$[ ]
- (d) CMF Loan Proceeds: \$[ ]
- (e) HOME Loan Proceeds: \$[ ]

9. **Subsequent Draws.** After the initial draw, the remaining Project Funds shall be disbursed in accordance with the Sources and Uses attached hereto as Exhibit B and incorporated herein.

10. **Conditions to Disbursements; Draw Requests.**

(a) Disbursement of the Mortgage Loan Proceeds will be determined in accordance with, and will be made only following the satisfaction of all conditions required under, the Building Loan Agreement as supplemented by this Disbursement Agreement. Disbursement of the Equity Bridge Loan Proceeds will only be made following the satisfaction of all conditions set forth in the Equity Bridge Loan Documents. Disbursement of the CMF Loan Proceeds will only be made following the satisfaction of all conditions set forth in the CMF Loan Documents. Disbursement of the HOME Loan Proceeds will only be made following the satisfaction of all conditions set forth in the HOME Loan Documents. The Project Completion Funds (as that term is defined in the Building Loan Agreement) shall be advanced prior to Mortgage Loan Proceeds, except as otherwise permitted by the Program Obligations and reflected in the Sources and Uses, which has been approved by HUD. The charges and/or items to be funded from the Loan Proceeds and Project Completion Funds are listed on the Sources and Uses.

(b) Lender, CMF Lender and HOME Lender agree that: (i) Lender has the right to approve construction advances after considering any reported noncompliance by CMF Lender and/or HOME Lender if the Project is proceeding in compliance with the approved plans and specifications; (ii) Lender has the right to review and approve any modifications to the schedule and allocation of draws listed on the Sources and Uses; and (iii) Lender has

the sole authority to resolve differences in the inspection process and the process of disbursing the CMF Loan Proceeds and HOME Loan Proceeds in accordance with the Program Obligations.

(c) Requests for disbursement of Mortgage Loan Proceeds will be made from time to time but generally no more frequently than once per month following the procedures contained in the Building Loan Agreement. Each such request for disbursement is referred to as a “**Draw Request**”. The Draw Request must be on form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, and attach form HUD-92448, Contractor's Requisition Form (if construction funds are requested). Each Draw Request must clearly indicate (i) the aggregate disbursement being requested to be funded by Mortgage Loan Proceeds, (ii) the portion of such disbursement to be funded from Tax Credit Equity, (iii) the portion of such disbursement to be funded from Equity Bridge Loan Proceeds, (iv) the portion of such disbursement to be funded from CMF Loan Proceeds, (v) the portion of such disbursement to be funded from HOME Loan Proceed, and (vi) a summary schedule of all disbursements to date showing total dollar amounts disbursed from Mortgage Loan Proceeds, CMF Loan Proceeds, HOME Loan Proceeds, Equity Bridge Loan Proceeds and/or Tax Credit Equity.

(d) Borrower will submit each Draw Request to Lender, not less than ten (10) business days prior to the requested disbursement date. Concurrently with its submission to Lender, Borrower will also submit a copy of the Draw Request: (i) to the Equity Bridge Lender in the form set forth in the Equity Bridge Loan Documents, (ii) to CMF Lender in the form required by the CMF Loan Documents (iii) to HOME Lender in the form required by the HOME Loan Documents, (iv) to the extent required thereby, to Tax Credit Investor in the form and manner set forth in the Operating Agreement. Lender will review each Draw Request promptly upon its receipt, make, if applicable, any adjustments it determines reasonably necessary to the requested amount of Mortgage Loan Proceeds requested to be disbursed, and forward a copy of the Draw Request which Lender is willing to approve (the “**Approved Draw Request**”) to Borrower, and Borrower shall forward such approved Draw Request to Equity Bridge Lender, CMF Lender, HOME Lender (and to Escrow Agent, if and as applicable). The total amount of proceeds set forth in an Approved Draw Request is referred as an “**Advance**”.

11. **Disbursement of Funds and Issuance of Title Bring-Down Searches by Escrow Agent.**

(a) Intentionally Omitted.

(b) Funds in the amount of the initial advance of Mortgage Loan Proceeds, Equity Bridge Loan Proceeds, Tax Credit Equity, CMF Loan Proceeds and HOME Loan Proceeds as set forth in the initial Draw Request approved by HUD will be deposited in the amounts required by Lender with Escrow Agent and will be disbursed by Escrow Agent pursuant to an escrow instruction letter from Lender's counsel and a settlement statement signed by Lender and Borrower.

(c) Upon Lender's approval of each subsequent Advance, Lender shall instruct Escrow Agent to make such searches as necessary to determine that the status of the title to the Project has not changed since the date of prior notification given to Lender. If any intervening liens or other matters adversely affecting title (other than those expressly listed in the Title Policy, or as may have been approved and accepted by Lender and shown in endorsements previously given to Lender), Lender, at its sole option, (i) may withhold the entire amount of Lender's Advance until such liens or other matters have been released or otherwise satisfied to Lender's satisfaction or (ii) may choose to withhold, or to advance to Escrow Agent to hold, funds from Lender's Advance equal to one hundred percent (100%) of such liens provided that Borrower or Contractor will fund to Lender or Escrow Agent, as applicable, an additional amount equal to not less than twenty-five percent (25%) of such liens and Lender or Escrow Agent will hold such one hundred twenty-five percent (125%) (or such higher percentage required by Lender or Escrow Agent) of the lien amount until Lender and Escrow Agent are satisfied such liens or matters are settled, including the delivery of lien releases and waivers of all rights related to such liens; and provided that Escrow Agent must insure over the liens to Lender's satisfaction as a condition to the Advance being funded.

(d) Prior to each disbursement of an Advance, the following items must be delivered to Lender by Borrower if and as requested by Escrow Agent (the "**Additional Draw Documents**"):

(i) The Approved Draw Request.

(ii) Lien waivers from the Contractor and each subcontractor or other parties reflected on the Approved Draw Request for all sums previously disbursed or to be disbursed under the Approved Draw Request in form and substance reasonably satisfactory to Escrow Agent, together with such statements, affidavits, supporting materials or releases relating to mechanics liens, if any, all if and as required by Escrow Agent. The lien waivers will set forth the amounts to be received from the applicable disbursements, the official capacity of the signatory to the waivers, the name and address of the Project, and be properly acknowledged. Each such lien waiver, whether partial or final, must stipulate that all lien rights are waived with respect to the total amount disbursed up to and including the last date upon which labor or material was supplied and for which payment was made. The parties acknowledge that Escrow Agent's collection of lien waivers does not relieve Borrower and Contractor of responsibility for notifying Escrow Agent of the identity of any suppliers or subcontractors that may have lien rights and from whom Escrow Agent may require lien waivers. Borrower and Contractor remain ultimately responsible for assuring that Contractor and subcontractors pay for all material and services incorporated into the improvements if the providers of such materials and services are not identified to Escrow Agent.

(iii) Approval of such Draw Request by Equity Bridge Lender, CMF Lender and HOME Lender of all items required in connection with a Draw Request pursuant to the Equity Bridge Loan Documents, the CMF Loan Documents, the HOME Loan documents, as applicable.

(e) Following receipt by Lender of notice from Escrow Agent that it is otherwise in a position to issue the required bring-down search, and so long as Lender is satisfied that any Equity Bridge Loan Proceeds, CMF Loan Proceeds, HOME Loan Proceeds and/or Tax Credit Equity is or will be available to timely fund the remaining portion of the Approved Draw, Lender will wire the amount indicated on the Approved Draw Request to be funded by Lender pursuant to this Disbursement Agreement.

(f) Notwithstanding anything herein to the contrary, none of Lender, Equity Bridge Lender, CMF Lender or HOME Lender shall have any obligation to fund unless and until such party is comfortable that the full amount of each of the other sources needed to fund the Approved Draw is or will be timely available for such purpose and all its funding conditions have been satisfied.

12. **Notices.** All notices to be given under this Disbursement Agreement will be deemed to have been given or served upon the addressee following (i) courier delivery by respected courier with evidence of receipt, (ii) overnight delivery by a nationally recognized overnight courier service with evidence of receipt, (iii) deposit in the United States Mail, registered or certified mail (return receipt requested), on the date specified in the return receipt thereto or (iv) by email with evidence of delivery and receipt. Such addresses may be changed by notice given in the same manner.

Borrower: Arbours at Moores Mill, LLC  
242 Inverness Center Drive  
Birmingham, Alabama 35242  
Attention: Samuel T. Johnston

With a copy to: Compton Jones Drescher LLP  
2170 Highland Ave., South, Suite 250  
Birmingham, Alabama 35205  
Attention: Paul Compton

Escrow Agent: Pierce Ledyard Johnston, PC  
3801 Airport Boulevard  
Mobile, Alabama 36608  
Attention: Goodman G. Ledyard

Lender: Merchants Capital Corp.  
410 Monon Boulevard, 5th Floor  
Carmel, Indiana 46032  
Phone: 317-569-7420  
Email: mcc-hud-asset-managers@merchantscapital.com  
Attention: FHA Asset Management

With a copy to: Dinsmore & Shohl LLP  
One Indiana Square  
Suite 1800  
Indianapolis, Indiana 46204  
Attention: Michael B. Reichert

Equity Bridge  
Lender Wells Fargo Bank, National Association  
550 S. Tryon Street  
23<sup>rd</sup> Floor, D1086-239  
Charlotte, NC 28202-4200  
Attention: CLI Deal Management, Loan No:  
1021554

With a copy to: Wells Fargo Bank, National Association  
Winston-Salem Loan Center  
100 North Main Street, 10<sup>th</sup> Floor  
MAC D4001-105  
Winston-Salem, North Carolina 27101  
Attention: Disbursement Administrator  
Loan #: 1021554

With a copy to: Womble Bond Dickinson LLP  
555 Fayetteville Street, Suite 1100  
Raleigh, North Carolina 27601  
Attention: Peter Duffley

CMF Lender: United Bank  
200 E. Nashville Avenue  
Atmore, Alabama 36502  
Attention: Joseph D. Raines

With a copy to: Stone Crosby, P.C.  
126 Courthouse Square  
Bay Minette, Alabama 36507  
Attention: Scott Lewis

HOME Lender: The City of Huntsville, Alabama  
Department of Community Development  
P.O. Box 308  
Huntsville, Alabama 35804

Tax Credit Investor: Wells Fargo Bank, National Association  
550 S. Tryon Street  
23<sup>rd</sup> Floor, MAC D1086-239  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset  
Management

With a copy to: Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, NY 14210  
Attn: Constance C. Giessert, Esq.  
Email: [cgiessert@chwattys.com](mailto:cgiessert@chwattys.com)

All such notices and other communications will be deemed effective upon receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given will be deemed to be receipt of the notice, demand or request sent.

13. **Charges Paid by Borrower.** Borrower shall pay any title charges, including the cost of bring-down searches that are required in connection with each disbursement of Mortgage Loan Proceeds.

14. **HUD Determination of Amount to be Disbursed; HUD Authority.** For each Draw Request for which HUD approval is required (or requests), the amount of each disbursement of funds shall be determined by HUD; however, prior to the approval of disbursements in an amount which is different than was previously approved by Lender, CMF Lender, HOME Lender, Equity Bridge Lender, Lender shall reasonably endeavor to cause HUD to consider any comments received from Lender, Lender, HOME Lender, Equity Bridge Lender and/or Borrower, and to consult with Lender, Lender, HOME Lender, Equity Bridge Lender and/or Borrower regarding the amount of any disbursement. The parties acknowledge that HUD has sole authority to resolve differences or disputes in the Project inspection process and disbursement of the funds.

15. **Conflict.** Notwithstanding the foregoing, to the extent that any of the provisions of this Disbursement Agreement are inconsistent with any of the provisions of the Mortgage Loan Documents or the Program Obligations (as those terms are defined in the security instrument securing the Mortgage Loan) the provisions of the Mortgage Loan Documents and the Program Obligations shall govern.

16. **Miscellaneous.**

(a) This Disbursement Agreement may be executed in any number of counterparts by the parties. Each of the counterparts will be considered an original, and all counterparts will constitute but one and the same instrument.

(b) Each individual executing this Disbursement Agreement on behalf of a party which is an entity, represents, warrants, and covenants to the other parties that (a) such person is duly authorized to execute and deliver this Disbursement Agreement on behalf of such entity in accordance with the authority granted under the organizational

documents of such entity, and (b) such entity is bound under the terms of this Disbursement Agreement.

(c) No waiver of any term or condition of this Disbursement Agreement, and no waiver of any default or failure of compliance, will be effective unless in writing, and no waiver furnished in writing will be deemed to be a waiver of any other term or provision of any future condition of this Disbursement Agreement. This Disbursement Agreement may not be changed, terminated or modified orally or in any other manner, other than by an agreement in writing signed by the parties, and approved by HUD, if required.

(d) This Disbursement Agreement will be binding upon the parties and their respective successors and assigns; provided, however, the same does not and will not authorize any assignment under this Disbursement Agreement except as provided in this subsection (d). This Disbursement Agreement may be assigned by Lender to any assignee of the mortgagee interest in the Mortgage Loan. Otherwise this Disbursement Agreement will not be assigned by any party without the consent of the other parties (except for any permitted assignment by Lender under the HUD contract of mortgage insurance), but will be enforceable against any approved successors or assigns.

(e) This Disbursement Agreement is only among the parties and is not intended to be, nor will it be construed as being, for the benefit of any third party. This Disbursement Agreement can be amended or modified only by a written amendment signed by all the parties and, if required, approved by HUD.

(f) Neither the execution of this Disbursement Agreement nor the participation in advances of Mortgage Loan Proceeds is intended to be, nor will it be, construed as the formation of a partnership or joint venture between or among Lender, Borrower, Equity Bridge Lender, CMF Lender, HOME Lender and Escrow Agent.

(g) This Disbursement Agreement will be construed according to its fair meaning as if prepared by all parties to this Disbursement Agreement. This Disbursement Agreement will be construed in accordance with the laws of the State of Alabama. The parties agree to submit to the jurisdiction of any state or federal court having competent jurisdiction located in the State of Alabama, and to make no objection to venue therein should any action at law or in equity be necessary to enforce or interpret this Disbursement Agreement. The invalidity or unenforceability of any provision of this Disbursement Agreement will not affect any other provision. If any action at law or in equity is necessary to enforce or interpret the terms of this Disbursement Agreement, the prevailing party in such action will be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs.

(h) Escrow Agent has joined in the execution of this Disbursement Agreement for purposes of acknowledging that Mortgage Loan Proceeds will be funded through Escrow Agent.



(i) The statements and representations contained herein are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

**SIGNATURE PAGE TO DISBURSEMENT AGREEMENT**

This Disbursement Agreement has been executed as of the day and year first above written.

**LENDER:**

MERCHANTS CAPITAL CORP.,  
an Indiana corporation

By: \_\_\_\_\_  
Nicole Swentek,  
Senior Vice President

[Signatures continue on following page]

**WARNING: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 USC 1001, 1010, 1012; 31 USC 3729, 3802; 24 CFR Parts 25, 28 and 30; and 2 CFR Parts 180 and 2424.**

**SIGNATURE PAGE TO DISBURSEMENT AGREEMENT**

**BORROWER:**

ARBOURS AT MOORES MILL, LLC,  
an Alabama limited liability company

By: Moores Mill MM, LLC,  
an Alabama limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Samuel T. Johnston, Authorized Member

[Signatures continue on following page]

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**SIGNATURE PAGE TO DISBURSEMENT AGREEMENT**

**EQUITY BRIDGE LENDER:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
David W. Kautter, Director

[Signatures continue on following page]

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**SIGNATURE PAGE TO DISBURSEMENT AGREEMENT**

**CMF LENDER:**

UNITED BANK

By: \_\_\_\_\_  
JOSEPH D. RAINES,  
Senior Vice President

[Signatures continue on following page]

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**SIGNATURE PAGE TO DISBURSEMENT AGREEMENT**

**HOME LENDER:**

CITY OF HUNTSVILLE, ALABAMA

By: \_\_\_\_\_  
Tommy Battle, its Mayor

[Signatures continue on following page]

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**SIGNATURE PAGE TO DISBURSEMENT AGREEMENT**

Pursuant to Section 16(h), the undersigned joins in the execution of this Disbursement Agreement.

**ESCROW AGENT:**

PIERCE LEDYARD JOHNSTON, PC

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT "A"**

**Legal Description**

Lot 1A, Arbours At Moores Mill, according to the plat thereof recorded in Plat File # 2021-19664, of the records in the Office of the Judge of Probate, Madison County, Alabama.



**EXHIBIT "B"**

**Sources and Uses and Projected Draw Schedule**



**EXHIBIT "C"**

**Tax Credit Equity Contribution Schedule**

Arbours at Moores Mill			
Tab 2: Equity Contribution Schedule			
LIHTC Summary Report 3.0 for New Construction and Substantial Rehabilitation			
Installment	Amount	% Paid	Major Conditions to be Met*
First	\$4,002,740	20.00%	Initial Endorsement
Second	\$1,529,858	7.64%	Latter of C of O 100% of units; Lien free completion; or eligible basis estimate
Third	\$1,099,993	5.50%	Latter of Final Endorsement; 1.15 DSC 90 days; 100% qualified occupancy; Cost Cert; 8609
Fourth	\$13,381,108	66.86%	Equity Conversion
Fifth	\$0	0.00%	
Sixth	\$0	0.00%	
Seventh	\$0	0.00%	
Eighth	\$0	0.00%	
Ninth	\$0	0.00%	
Tenth	\$0	0.00%	
<b>Total</b>	<b>\$20,013,699</b>	<b>100.00%</b>	

**EXHIBIT J**  
**TO AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA**  
**AND ARBOURS AT MOORES MILL, LLC**  
**FOR HOME INVESTMENT PARTNERSHIP (HOME) FUNDS**

**HUD Rider to Restrictive Covenants**

This instrument was prepared by  
And when recorded return to:  
Michael B. Reichert,  
Dinsmore & Shohl LLP  
One Indiana Square, Suite 1800  
Indianapolis, Indiana 46204-4208

## HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS is made as of December 1, 2023 by ARBOURS AT MOORES MILL, LLC, an Alabama limited liability company (“Borrower”) and the CITY OF HUNTSVILLE, ALABAMA, a municipal corporation (“Agency”).

WHEREAS, Borrower has obtained financing from Merchants Capital Corp., an Indiana corporation (“Lender”) for the benefit of the project known as Arbours at Moores Mill (“Project”), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (“Security Instrument”) dated as of December 1, 2023, and recorded in the Recorder’s Office of Madison County, Alabama (“Records”) contemporaneously herewith, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received HOME funds from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Declaration of Land Use Restrictive Covenants for Huntsville Alabama HOME Program (“Restrictive Covenants”) with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of December, 2023, and recorded in the Records.

WHEREAS, HUD requires as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means **Merchants Capital Corp., an Indiana corporation**, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act, 12 USC § 1701 *et seq.*, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) The provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive

Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants ~~will~~ does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) Intentionally Omitted.

The statements and representations contained in this Rider and all supporting documentation thereto are true, accurate, and complete. This certification has been

made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

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[Remainder of page intentionally blank; signature pages follow]





**SIGNATURE PAGE OF AGENCY TO  
HUD RIDER TO RESTRICTIVE COVENANTS**

AGENCY:

THE CITY OF HUNTSVILLE ALABAMA

By: \_\_\_\_\_  
Tommy Battle, its Mayor

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that Tommy Battle whose name as Mayor of the City of Huntsville, Alabama is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she in his/her capacity as Mayor of the City of Huntsville, Alabama, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Signature

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**Exhibit "A"**  
**Legal Description**

Lot 1A, Arbours At Moores Mill, according to the plat thereof recorded in Plat File # 2021-19664, of the records in the Office of the Judge of Probate, Madison County, Alabama.