

**HOUSING FIRST PERMANENT SUPPORTIVE HOUSING  
GRANT AGREEMENT**  
**by and between**  
**CITY OF BOISE**  
**and**  
**IDAHO HOUSING AND FINANCE ASSOCIATION**

**This HOUSING FIRST PERMANENT SUPPORTIVE HOUSING GRANT AGREEMENT** (“Agreement”) is entered into as of this \_\_\_\_\_ day of August, 2017 (“Effective Date”) by and between the City of Boise, an Idaho municipal corporation (“City”) and the Idaho Housing and Finance Association, a legal body created by the Idaho state legislature pursuant to Idaho Code 67-6202 (“IHFA”) (individually, each a “Party,” collectively, the “Parties”).

**WITNESSETH:**

**WHEREAS**, IHFA’s mission is to provide funding for affordable housing opportunities throughout Idaho communities where they are most needed and when it is economically feasible; and IHFA strives to improve lives throughout Idaho communities; and

**WHEREAS**, IHFA administers the State of Idaho’s Low Income Housing Tax Credit (“LIHTC”) and has selected a non-profit developer to receive approximately 5.8 million dollars (\$5,800,000.00) in tax credits to construct an affordable multi-family Permanent Supportive Housing (“PSH”) project following a Housing First model to provide housing for citizens experiencing chronic homelessness (the “Project”); and

**WHEREAS**, the City deems it to be in the public interest to encourage and facilitate the construction of the Project, which shall include forty-one (41) units, including one (1) manager’s unit and (40) one-bedroom tenant units of PSH for its most vulnerable, chronically homeless citizens; and

**WHEREAS**, IHFA has experience in financing the development of affordable low-income housing and has acquired information and understanding of PSH and Housing First housing models from other states; and

**WHEREAS**, due to IHFA’s expertise in this subject matter, and pursuant to Idaho Code §67-6206(ii) and §67-6223A, the City desires to enter into an agreement with IHFA wherein the City grants one million dollars (\$1,000,000.00) (“Funds”) to IHFA to be used to defray certain capital expenses of the Project; and

**WHEREAS**, IHFA desires to accept the Funds to be used for the purposes specified in this Agreement; and

**WHEREAS**, the Parties entered into a Memorandum of Understanding on April 12, 2016, that set forth the framework of the Parties intent to enter into this Agreement.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and conditions contained in this Agreement, the Parties agree as follows:

1. City Contribution. Within forty-five (45) days of the Effective Date of this Agreement, City shall provide the Funds to IHFA to be used for the Project for those purposes specifically set forth herein. At the time of IHFA construction loan closing, IHFA will wire the Funds to the title company to be held in escrow.

2. IHFA Obligations

a. Use of Funds. IHFA agrees that all Funds received from City, including any amounts earned by investing such Funds, shall be disbursed by IHFA only for the Agreed Purpose. The Agreed Purpose shall be any or all of the following:

i. Acquisition costs for the real property for the Project, which is located at 2200 and 2216 Fairview Avenue, Boise, Idaho 83702. The real property shall be valued at no more than the current fair market value as demonstrated by a market study/appraisal that is no more than six months old. An update will be allowed up to six months after the date of the original market study or appraisal, although in no instance will the IHFA accept a market study/appraisal beyond 12 months from the original date of purchase.

The real property shall not be located in a low-income census tract (51% or more of residents are earning 80% or less median income as defined by the U.S. Department of Housing and Urban Development) unless it is located within an Urban Renewal District.

- ii. Site preparation work, including the clearance, demolition, and removal of existing improvements.
- iii. Remediation of Project environmental site contamination.
- iv. Installation of on-site utilities.
- v. Construction costs for the Project.

In no event shall any Funds be used for operational expenses after the Project is built (including reserves).

b. Deed Restriction. IHFA shall cause a deed restriction to be filed against the Project that restricts the use of the property to affordable housing with income-eligibility restrictions and other compliance requirements consistent with 26 U.S. Code §42 and its implementing rules and regulations.

- c. Developer Contract Provisions. IHFA shall include the following terms in its contract with the developer who is selected for the Project:
  - i. Performance Security. IHFA shall require the selected developer to provide performance security (which may be in the form of a cash deposit, irrevocable letter of credit, bond, guaranty or other commercially reasonable security) to the extent required under the IHFA Qualified Allocation Plan to complete the project. Such performance security document shall invoke the surety's liability upon a default by the developer.
  - d. Insurance. Prior to closing the Mortgage Loan, the developer shall provide evidence of the contractor's Builder's Risk Insurance naming IHFA and City as additional insured in an amount of at least the full insurable value of the improvements, and the contractor's standard commercial liability policy in the amount of \$2,000,000, (or \$3,000,000 if there are any elevator buildings), naming IHFA and City as an additional insured. Both policies should provide a notice of cancellation provision requiring at least thirty (30) days prior notice of cancellation to IHFA and the City. Each such policy or policies shall contain acceptable mortgage clauses in favor of IHFA and the City as its interest may appear. Such insurance to be in amounts, form, and by such companies as shall be approved by IHFA and the City. Borrower will produce evidence that the contractor's insurance carrier certifies to IHFA and the City that any partial occupancy of a portion of the Project, while construction continues, will not in any manner jeopardize or reduce the coverage and the Builder's Risk insurance policy. A copy of the Certificate of Contractor's Workmen's Compensation showing IHFA and the City as the Certificate Holder shall also be furnished.

The developer shall also provide evidence of standard commercial liability policy in the amount of \$2,000,000, (or \$3,000,000 if there are any elevator buildings), naming IHFA and City as an additional insured. The policy should provide a notice of cancellation provision requiring at least thirty (30) days prior notice of cancellation to IHFA and the City.
  - e. Accounting of Funds. IHFA shall provide City a monthly accounting that details the disbursement of the Funds for the Agreed Purpose. City will issue written approval to IHFA prior to release of Funds to the developer.
  - f. Return of Funds. Any portion of the Funds not distributed for an Agreed Purpose for the Project within 30 days of the placed in service date of the project shall be returned to City at the termination of this Agreement.
- 3. Term and Termination. The term of this Agreement shall commence on the Effective Date and terminate within 30 days from the placed in service date of the project, but shall

terminate earlier upon (i) an Event of Default or Event of Negligence, as set forth in Section 5, or (ii) complete disbursement of the Funds to the selected developer. Notwithstanding the foregoing, the provisions of section 2, 3, 4, and 5 shall survive termination and shall continue so long as IHFA conducts required monitoring of the Project.

4. Monitoring. IHFA shall complete all compliance reviews and monitoring as required by the LIHTC regulations, and shall provide a copy of the same to the City on an annual basis.
5. Default. In the case of fraud, negligence, intentional or gross misconduct or other wrongdoing in the administration of funds on the part of IHFA, or if the Funds are knowingly distributed to the selected developer for use other than the Agreed Purpose, IHFA shall be in default of this agreement (an Event of Default). Upon the occurrence of an Event of Default by IHFA, which is not cured within five (5) days' written notice from City, IHFA shall return all funds related to the Event of Default, including any remaining balance, to the City upon City's request, and this agreement shall terminate. IHFA shall pay to the City all reasonable costs, fees, and expenses incurred by City in the exercise of any remedy allowed under law upon an Event of Default of IHFA.

In the case of fraud, negligence, intentional or gross misconduct or other wrongdoing in the use of Funds by the selected developer, or if the developer fails to maintain compliance consistent with 26 U.S Code §42 and its implementing rules and regulations and IHFA (an Event of Negligence) and the developer cannot, or the developer will not, remedy the default, IHFA shall not be in default of this Agreement (an "Event of Default"). Upon the occurrence of an Event of Negligence by the developer, which is not cured within five (5) days' written notice from City and/or IHFA, IHFA shall return all of the Funds, excluding appropriately expended Funds, to the City upon City's request, and this Agreement shall terminate. The developer shall pay to City all misused Funds, and reasonable costs, fees and expenses incurred by City in the exercise of any remedy allowed under law upon an Event of Negligence of the developer.

6. Relationship of Parties. Nothing contained in this Agreement shall be construed to create any relationship, partnership, employment or joint venture between IHFA and City, and each party shall remain independent. Except as expressly set forth herein, each Party shall be responsible for the respective costs and expenses connected with the operation of its business, and neither party shall be liable for the debts or obligations of the other. The City is not granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of IHFA or to bind IHFA in any manner; nor is IHFA granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of City or to bind City in any manner.
7. General Provisions.
  - a. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Neither party may assign its

rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party. Any attempted assignment or delegation without such consent will be void.

- b. Attorneys' Fees. If any action is necessary to enforce the terms of this Agreement, the prevailing party, as determined by the applicable tribunal, will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.
- c. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Idaho excluding that body of law pertaining to conflict of laws.
- d. Notices. Notices required by this Agreement shall be hand delivered or sent by USPS First Class Mail, postage prepaid, to the receiving party, addressed as follows:

**City**

AnaMarie Guiles, Senior Manager  
Housing & Community Development Division  
P.O. Box 500  
Boise, Idaho 83701

**IHFA**

Cory Phelps, Vice President  
Project Finance Division  
P.O. Box 7899  
Boise, ID 83707-1899

All notices shall be deemed delivered as of the date actually received. A Party may change or update its address by written notice in accordance with this section.


- e. Complete Understanding; Modification. This Agreement constitutes the complete and exclusive understanding and agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.
- f. Recitals. Each of the recitals set forth in this Agreement is hereby incorporated into and is hereby made a part of this Agreement.
- g. Representation. Each of the parties has been represented or has had the opportunity to be represented by counsel in the negotiation and preparation of this Agreement. Therefore, this Agreement shall be construed without regard to any presumption against the party drafting the same.

- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. A signature transmitted by telecopier, facsimile machine, or e-mail shall be deemed an original signature for all purposes hereunder.
- i. Severability. In the event any provision of this Agreement shall be found invalid, void and/or unenforceable, for any reason, neither this Agreement generally nor the remainder of this Agreement shall thereby be rendered invalid, void, and/or unenforceable, but instead each such provision, and (if necessary) other provisions hereof, shall be reformed by a court of competent jurisdiction so as to effect, insofar as is practicable, the intention of the parties as set forth in this Agreement; provided, however, that if such court is unable or unwilling to effect such reformation, the remainder of this Agreement shall be construed and given effect as if such invalid, void, and/or unenforceable provisions had not been a part hereof.
- j. Discrimination Prohibited. In fulfilling its obligations hereunder, neither party shall discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, age or disability.
- k. No Third Party Beneficiaries. The Parties do not confer any rights or remedies upon any person, including the selecting developer, other than the parties to this Agreement.
- l. Approval Required. This Agreement shall not become effective or binding until approved by the City of Boise and the Board of Directors of the IHFA.

IN WITNESS WHEREOF, an authorized representative of each Party executes this Agreement, the date first written.

**IDAHO HOUSING AND FINANCE ASSN.**

**THE CITY OF BOISE**

By:   
**Gerald M. Hunter, President**

By: \_\_\_\_\_  
**David H. Bieter, Mayor**

Date: 8-29-2017

Date: \_\_\_\_\_