

EM SUBMISSION NO.: EM423 2015

PRESENTED: 4-29-15

ADOPTED: 4-29-15

BY THE EMERGENCY MANAGER:

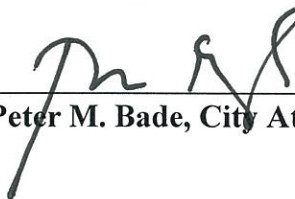
RESOLUTION APPROVING A HOME REGULATORY AGREEMENT AND DISCHARGE OF MORTGAGE (HOME LOAN) BETWEEN THE CITY OF FLINT AND FIRST STREET LOFTS, LLC

After review of the financial analysis, operating proformas, and the development agreement of Uptown Development, LLC and its First Street Lofts development, the City recognizes the diminished financial performance of this development due to the loss of a long term tenant; and

Based upon the City's review, the City will now move forward to convert the HOME loan into a HOME grant pursuant to the covenants contained within the attached Home Regulatory Agreement and Discharge of Mortgage (HOME loan), in order to assist in the stabilization of this development.

IT IS RESOLVED that the Emergency Manager approves the attached Home Regulatory Agreement and Discharge of Mortgage (HOME loan) between the City of Flint and First Street Lofts, LLC, in order to convert the HOME loan into a HOME grant pursuant to the mutually agreed upon covenants contained in the Agreement.

APPROVED AS TO FORM:



Peter M. Bade, City Attorney

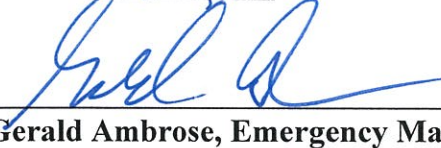


Natasha L. Henderson, City Administrator

EM DISPOSITION:

ENACT FAIL _____

DATED 4-29-15



Gerald Ambrose, Emergency Manager

HOME REGULATORY AGREEMENT

THIS Agreement, made this 1st day of January, 2007 between First Street Lofts, LLC (the "Owner"), whose address is 503 South Saginaw Street, Suite 1500, Flint, Michigan 48502, and the City of Flint, Michigan (the "City"), whose address is 1101 South Saginaw Street, Flint, Michigan 48502.

WITNESSETH:

WHEREAS, the City of Flint, a local Participating Jurisdiction for HOME Investment Partnership Program ("HOME"), administers HOME funds made available by the U.S. Department of Housing and Urban Development ("HUD") subject to the requirements of Section 24, Part 92 of the Code of Federal Regulations (24 CFR 92.1 et seq.); and

WHEREAS, First Street Lofts, LLC, (the "Developer") has applied for a HOME loan for the financing of the redevelopment of four housing units located in the First Street Lofts Building at 460 South Saginaw Street, Flint MI 48502 in the City of Flint, Genesee County, Michigan, which is more fully described in Exhibit A which is hereby incorporated by reference (the "Property"); and

WHEREAS, the Developer is justly indebted to the City in the principal sum of Five-Hundred and Forty-Five Thousand and Five-Hundred and 49/100ths dollars (\$545,500.49) (the "City HOME Loan") as evidenced by a certain HOME Development and Loan Agreement dated September of 2006 and a HOME Mortgage Note dated August 27, 2006; and

WHEREAS, the City as a Participating Jurisdiction under the HOME program is willing to finance the eligible project costs associated with the rehabilitation and construction of four one-bedroom housing units on the Property, subject to terms and conditions set forth in the Development and Loan Agreement, the HOME Mortgage Note, and this Regulatory Agreement; and

WHEREAS, the Owner is willing to allow the City to encumber the Property with this Regulatory Agreement as a way to secure the HOME restrictions on the Property.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. The Owner represents and warrants to the City as follows:
 - a. The Property and all activities related to the rehabilitation, and/or leasing thereof shall be eligible activities under the HOME Program.
 - b. The Owner shall comply with all the requirements of Title II of the

Cranston-Gonzalez National Affordable Housing Act, the HOME program, and the regulations appearing at Section 24, Part 92 of the Code of Federal Regulations (24 CFR 92 et seq.).

- c. The Owner shall comply with such further statutory, regulatory, and contractual requirement as may be applicable to the receipt and expenditure of HOME Program funds, as administered by the U.S. Department of Housing and Urban Development and the City.
- d. The Owner's application for HOME funds is true and correct in all respects.
- e. The Owner has obtained adequate financing in the form of a HOME Loan from the City and other sources for the portion of the Property that will not be financed by HOME funds.
- f. The Owner agrees that the provisions of the HOME Development and Loan Agreement executed by and between the City of Flint and the Developer, to fund eligible project costs associated with the rehabilitation and construction of four (4) one-bedroom housing units on the Property, dated September of 2006 ("Development and Loan Agreement"), shall be incorporated by reference into this regulatory agreement.

2. The Owner shall assure that the HOME assisted units comply with the affordability requirements for the HOME Program as set forth in 24 CFR 92.252. These requirements are as follows:

- a. Qualification of HOME Assisted Housing Units As Affordable Housing (24 CFR 92.252). The Owner agrees to comply with HOME affordability requirements and consequent HOME Program Rents for the Affordability Period, as defined in 4.a., below, by maintaining the monthly rents to be paid by the tenants of all four (4) one bedroom HOME-Assisted units at no more than the lesser of (i) existing Section 8 Fair Market Rents for comparable units in the area as established by HUD under 24 CFR 888.111, less monthly utility allowances, or (ii) one-twelfth (1/12) of thirty percent (30%) of the adjusted income of a family whose annual income equals 60% of area median gross income, as determined by HUD, adjusted for family size. Pursuant to 24 CFR 92.252(i)(2), existing tenants who no longer qualify as low-income families must pay as rent not less than thirty percent (30%) of the family's adjusted monthly income, as recertified annually, but not to exceed, however, the market rent for comparable, unassisted units in the neighborhood. This requirement shall be enforceable against any successor and assignee of the Owner by means of a covenant running with the property. The Owner shall be required to annually certify to the City that the rents for the HOME assisted units fall within the requisite limits.
- b. Income Limits for HOME Assisted Housing Units (24 CFR 92.216) The Owner agrees to comply with HOME Tenant Income Limit requirements for the Affordability Period by restricting occupancy (initial tenants in all HOME assisted units) in four (4) one-bedroom HOME-assisted units to tenants whose annual household income does not exceed 60 percent of area median

income, (adjusted for family size), as determined by HUD. In furtherance of this requirement the Owner shall annually certify the household income of tenants residing in the HOME assisted units.

- c. HOME units designated as "floating" units. Per 24 CFR 92.252(j) the HOME-assisted units may be designated as floating units. The HOME-assisted units are to be identified at initial occupancy, per the requirements of 24 CFR 92.504(c)(3)(ii)(A). Floating units may be changed maintain conformity with the requirements of 24 CFR 92.252 during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same; each substituted unit will be comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit. As part of its reporting, the Owner will provide the City with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements.
- d. Lease Terms and Tenant Selection (24 CFR 92.253) The Owner shall assure that its Lease does not contain prohibited lease provisions as set forth in 24 CFR 92.253 and as defined in the City's HOME guidelines. The Owner shall also comply with the terms and conditions of this regulation as implemented by the City with respect to termination of tenancy, maintenance of the HOME assisted units and the selection of tenants.

3. In addition to the requirements in Section 2, above, for so long as this Regulatory Agreement is in effect or the Mortgage Note is outstanding the Owner agrees that:

- a. 100% of the Property's HOME-assisted units must be occupied by households with incomes at or below 80% of area median gross income, adjusted for family size. Household income shall be determined pursuant to regulations to be issued by the Secretary of the Treasury, in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the U.S. Housing Act of 1937, as amended (the "Section 8 Program"); and, if the Section 8 Program is terminated, under the Section 8 Program regulations as in effect immediately before termination. Until the Secretary of the Treasury publishes these regulations, the income of individuals shall be determined in accordance with the Section 8 Program regulations. The CPD Income Eligibility Calculator at: <https://www.onecpd.info/incomecalculator/> may be used to make these eligibility determinations.
- b. Per 24 CFR 92.252, HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:
 - The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
 - A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

Applicable HOME rents are available at <https://onecpd.info/resource-library/home-rent-limits/>. Fair Market Rents are established by HUD each year for the Section 8 Program. For more information about the annual calculation of Fair Market Rents, see huduser.org, the website for HUD's Office of Policy Development and Research.

- c. Subsequent rents during the affordability period. The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment. The City will provide Owner with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph 3.b. above). The Owner must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section. The City will review rents for compliance and approve or disapprove them every year. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the Owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.
- d. Property Standards. The Owner agrees to maintain all HOME-assisted units in a manner consistent with the HOME property standards at 24 CFR 92.251 throughout the affordability period.

4. The Owner agrees that its covenants restricting the use and occupancy of the Property set forth in the Section 2 are essential to the making of the HOME Loan, and that the enforcement of these covenants is necessary to preserve the HOME Program benefits. Therefore, the Owner further agrees as follows:

- a. Covenants Running With the Land. It is the intent of the Owner and the City that the use and occupancy restrictions contained in this Agreement shall be covenants that run with the land, pursuant to the Act 346 of the Public Acts of 1966, as amended (the "Act") **for a period of fifteen (15) years** after project completion as defined by 24 CFR 92.2 and determined by the City (the "Affordability Period"), and therefore binding on all the successors and assigns of the Owner and the City. These covenants shall survive a sale, transfer, or other disposition of the Property by the Owner, or the repayment of the Mortgage Note, but shall cease to apply to the Property in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or an action of a federal agency after the date of this HOME Regulatory Agreement. The covenants of the Owner, however, shall survive a foreclosure, transfer of title by deed in lieu of foreclosure or similar event if at any time during the Period of Affordability the Owner or a related person thereafter obtains an ownership interest in the Property.
- b. Inspections. In order to enable the City to monitor the Owner's compliance with these use and occupancy restrictions, the Owner covenants and agrees that the City and its agents or employees shall be allowed access to the

Property and leasing or business offices during normal business hours to inspect and audit all books and records pertaining to the Property.

- c. Status Reports. The Owner covenants and agrees to complete and send to the City an annual, or at any greater frequency that may be requested by an Authorized Officer of the City, status report(s) in form and content acceptable to the City, which status report(s) shall demonstrate ongoing compliance with these use and occupancy restrictions, including tenant incomes, rents, lease requirements and property standards. In addition, during the period of affordability, the City will examine regularly, and at least annually, the financial condition of the project to determine the continued financial viability of the housing, per 24 CFR 92.504(d)(2). Mayor or his designee, the Economic and Community Development Director or his designee, or the Corporation counsel or her designee. The term "Authorized Officer of the City" refers to the foregoing employees of the City when acting within the scope of their City.
- d. Transferees Bound. The Owner covenants and agrees that in the event it sells or otherwise transfers ownership of the Property, it will enter into such agreements with the purchaser or transferee as may be prescribed by the City which have the effect of causing such purchaser or transferee to be bound by these use and occupancy restrictions, as they may be amended or supplemented.
- e. Necessary Actions. The Owner agrees to evict any tenant or take such other corrective action as is determined necessary by an Authorized Officer of the City necessary to comply with the covenants contained in this Agreement. The City shall also have the right to take any and all action which it deems appropriate in order to enforce compliance with the covenants of this Agreement.
- f. Annual Certification. The Owner will submit an annual certification evidencing compliance with the requirements of this Section.

5. The Owner shall maintain and operate the Property so as to provide decent, safe, and sanitary housing and shall provide all services, maintenance and utilities according to standards as required by the City and in accordance with state and local codes and ordinances.

6. The Property and all plans, offices, equipment, books, contracts, records, documents, and other papers relating thereto, shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the City or its authorized agent at the Property site or any other location acceptable to the City. The Owner shall retain copies of all documents relating to the Property for at least fifteen years, all or any of which may be subject to inspection and examination by the City or its authorized agents.

7. The books and records of the operations of the Property shall be kept in accordance with the policies, General Rules and requirements of the City. Within three (3) business days of the City's written request, the Owner shall furnish copies of or make available for review by the City or its authorized agents at the Property site or any other location acceptable to the City, all books, records, papers, and documents relating to the Property and the Owner, including all contracts and records of the Owner relating to the Property and income

from the Property, that may be required by the City from time to time to assure itself of compliance with its policies, General Rules and requirements.

8. Within 120 days following the end of each calendar year of operation, the City shall be furnished with a financial statement for the Property audited by an Independent Certified Public Accountant in a form approved by the City. This report shall be certified to by the Owner.

9. The Owner shall furnish occupancy reports and financial reports relating to the operation of the Property in accordance with a City-approved reporting format, and within established City time-frames. At the request of the City, its agents, employees, or attorneys, the Owner shall promptly answer with specificity all questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the Property, its tenants and status of the Mortgage Note.

10. All tenants shall be required to execute a lease in a form approved by the City. The Owner shall assure that its lease for all HOME-Assisted Units does not contain any of the "prohibited lease terms" set forth in 24 CFR 92.253. The Owner shall also comply with the terms and conditions of this regulation as implemented by the City with respect to termination of tenancy, maintenance of the HOME-Assisted Units and the selection of tenants.

11. In selecting tenants the Owner shall not discriminate against any tenant or family because any of its members are children.

12. The Owner agrees that it shall not, without the prior written approval of an Authorized Officer of the City:

- a. Convey, transfer, or encumber any of the Property, or permit the conveyance, transfer or encumbrance of all or any portion of the Property, except as provided in the Mortgage Note.
- b. Assign, transfer, dispose of, or encumber any personal property of the Property, including the Receipts, or pay out any funds, except as permitted in Section 18 above and subparagraph d of this Section.
- c. Convey, assign, or transfer the interest of any general partner in the Owner, or any right to manage or receive Receipts or any other form of income from the Property.
- d. Remodel, add to, reconstruct, or demolish any part of the Property or subtract from any real or personal property of the Property in excess of \$15,000.00.
- e. Engage in any other business activity, including the operation of any other rental housing property, or incur any liability or obligation not in connection with the Property.
- f. Require, as a condition of occupancy or leasing of any unit in the Property, any consideration or deposit other than the prepayment of the first month's rent and a security deposit as allowed under the laws of the State of Michigan. Any funds collected as a security deposit shall be kept separate and apart from all other funds of the Property, in an interest bearing trust account with a bank or other regulated financial institution located within the State of

Michigan, whose deposits are insured by an agency of the United States Government. The amount of funds in this account shall at all times be equal to or exceed the aggregate of all security deposits held for current and former tenants, unless the Owner elects to provide a bond which complies with Michigan law to guarantee payment of the security deposits. The use of a tenant's security deposit shall be governed by the Management Agreement and Michigan law.

- g. Pay any compensation, directly or indirectly, including wages or salaries, or incur any obligations to any of the Owner's officers, directors, stockholders, members, trustees, partners, beneficiaries under a trust, or to any of their nominees.
- h. Enter into any contract or contracts for supervisory or managerial services to the extent compensation paid under the contract(s) is to be paid from Property Receipts.
- i. Transfer, assign, or pledge any right or interest in, or title to, any funds deposited by the Owner with the City or reserved by the City for the Owner. As used in this instrument, the term "City" shall be deemed to include any persons to whom the Mortgage Note referred to above shall be assigned.

13. The Owner shall not, in the selection of families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, height, weight, sex, age (except for a Property specifically designed for elderly occupants), national origin, handicap, or marital or familial status except as provided by law. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968 (as amended by the Fair Housing Amendments Act of 1988), the Americans with Disabilities Act, the Elliott-Larsen Civil Rights Act, and the Michigan Handicappers Civil Rights Act.

14. The Owner shall conduct the marketing of all units and the selection of families in accordance with the City-approved Affirmative Fair Marketing Plan, all regulations or rules relating to fair housing advertising, applicable HOME Program Affirmative Fair Marketing requirements (as to the HOME-Assisted Units), and the applicable minimum set-aside requirements of the Code, including any regulations published pursuant thereto, for very low income persons.

15. The violation of any provision of this Agreement by the Owner, including any violation of the provisions of the development agreements between the City and the Owner cited in Section 1.f. above, shall be a default under this Agreement and the Mortgage Note. The City may give written notice of such default to the Owner, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to the City, be designated by the Owner as its legal business address. If the default is not corrected to the satisfaction of an Authorized Officer of the City within 30 days after the day such notice is mailed or within such further time as an Authorized Officer of the City reasonably determines is necessary to correct the default, without further notice the City may avail itself of any remedy provided in the Mortgage Note or other document executed in connection with the Mortgage Note, or any other remedy it may have at law or in equity in the event of such a default. The City's remedies shall include the right to apply to any court, State or Federal, for the specific performance of the covenants and agreements contained in this Agreement; for an injunction against any violation of such covenants and agreements; for the appointment of a receiver to take over and operate the Property; or for such

other relief as may be appropriate, since the injury to the City arising from any default under this Agreement would be irreparable and the amount of damage difficult to ascertain. Despite anything in the foregoing to the contrary, the City may take possession of the Property, bring any action necessary to enforce the rights of the Owner growing out of the Property's operation, and collect the rents and operate the Property in accordance with the terms of this Agreement until such time as the City in its discretion, determines that the Owner is again in a position to operate the Property in accordance with the terms of this Agreement and in compliance with the requirements of the Mortgage Note. The City's election to pursue any one or more of the above remedies shall not be construed to preclude or be a waiver of the City's right to pursue any of the other remedies with respect to the default for which such remedy was pursued or with respect to any default prior or subsequent to such remedy.

16. The Owner agrees that it will obtain and keep in force such insurance coverage as required by the Development and Loan Agreement.

17. Noncompliance with HOME requirements described in this Agreement, failure to meet HOME regulations, use of funds for something other than the stated purpose, or material breach of the terms and conditions of HOME funding will result in a default of this Agreement. The City will be allowed to intervene in the Property's management when a default occurs or when the Property is in danger of defaulting prior to the end of the Affordability Period. The City will notify the Owner of a potential default and provide the Owner an opportunity to take corrective actions to cure the default.

18. No Amendment or modification of this Agreement, and no waiver by any party hereto of any representation, or condition of this Agreement shall be valid unless in writing and signed by all the parties to this Agreement.

19. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.

20. This Agreement may not be assigned without the written consent of the City.

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

First Street Lofts, LLC - Owner

By: _____
Gary Hurand

Its: Manager

STATE OF MICHIGAN)

: ss

COUNTY OF GENESEE)

On this ____ day of _____, _____ Gary Hurand, Manager of First Street Lofts, LLC before me personally appeared to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free and act deed in the capacity above designated.

Notary Public, _____ County, MI
Acting in the County of _____
My Commission Expires: _____

CITY OF FLINT
City

By:  _____

STATE OF MICHIGAN)
 : ss
COUNTY OF GENESEE)

On this ____ day of _____, _____ before me personally appeared Jerry Ambrose to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free and act deed in the capacity above designated.

Notary Public, _____ County, MI
Acting in the County of _____
My Commission Expires: _____

WHEN RECORDED RETURN TO:
Gary Hurand
First Street Lofts, LLC
503 South Saginaw Street, Suite 1500
Flint, MI 48503

EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY