

ORDINANCE NO. 2010- 09

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH THE STATE OF OHIO DEPARTMENT OF DEVELOPMENT FROM JANUARY 1, 2010 THROUGH DECEMBER 31, 2012 FOR THE ADMINISTRATION OF A HOUSING REVOLVING LOAN FUND, AND DECLARING AN EMERGENCY.

WHEREAS, the State of Ohio Department of Development, Office of Housing and Community Partnerships administers the federal HOME Investment Partnerships (HOME) Program for the State of Ohio; and

WHEREAS, the City of Kent has been determined to be an eligible recipient of HOME funds;

WHEREAS, the City of Kent has been awarded HOME funds from the State of Ohio Department of Development for use to finance eligible activities that may generate program income as defined;

WHEREAS, the City of Kent is permitted to establish the Housing Revolving Loan Fund to improve the affordable housing stock in the City, and to provide for the housing needs of low- and moderate-income persons through the Housing Revolving Loan Fund; and

WHEREAS, time is of the essence for execution of this Agreement so that the City of Kent may begin receiving funds.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That the City Manager, or his designee, be and is hereby authorized to enter into an agreement with the State of Ohio Department of Development from January 1, 2010 through December 31, 2012. for the administration of a Housing Revolving Loan Fund, said agreement is attached hereto as "Exhibit A" and hereby approved by this Council.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 01/20/10
DATE

MAYOR & PRESIDENT OF COUNCIL

ATTEST: _____
ACTING CLERK OF COUNCIL

I hereby certify that Resolution No. 2010- 09 was duly enacted on this 20TH day of JANUARY, 2010 by the Council of the City of Kent, Ohio.

Acting Clerk of Council

HOUSING REVOLVING LOAN FUND ADMINISTRATION AGREEMENT

This Housing Revolving Loan Fund Administration Agreement (the "Agreement") is made and entered into by and between the **State of Ohio, Department of Development**, located at 77 South High Street, P.O. Box 1001, Columbus, Ohio 43216-1001 (the "Grantor"), and the _____, located at _____ with F.T.I. Number: _____ (the "Grantee"), and shall be effective for the period beginning **January 1, 2010 (Effective Date)** and ending **December 31, 2012 (Termination Date)**.

BACKGROUND INFORMATION

A. Grantor through its Office of Housing and Community Partnerships ("OHCP") administers the federal Community Development Block Grant ("CDBG") Program and the HOME Investment Partnerships (HOME) Program for the State of Ohio.

B. Grantee has been determined to be an eligible recipient of CDBG and/or HOME funds and Grantee has been awarded CDBG and/or HOME funds from the Grantor for use to finance eligible activities that may generate Program Income as defined herein.

C. Grantor has recognized the positive impact on community development initiatives when the use of Program Income is locally determined. Grantor has permitted the establishment of Housing Revolving Loan Funds within local political subdivisions to meet the primary development goals of: 1) Improving the affordable housing stock, and 2) Providing for the affordable housing needs of low-and moderate-income persons of the Housing Revolving Loan Fund.

D. Grantor desires to have Grantee to administer a Revolving Loan Fund using the CDBG and/or Home Program Income and Grantee desires to administer a Revolving Loan Fund using the CDBG and/or Home Program Income for the purposes stated above.

E. Grantee has adopted Resolution (or Ordinance) # _____ on _____, _____ (date) authorizing the execution of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

STATEMENT OF THE AGREEMENT

1. Revolving Loan Fund Capitalization. Grantee shall deposit any and all Housing Program Income, as defined herein, derived from CDBG Community Housing Improvement Program (CHIP) and HOME funds awarded by the Grantor to the Grantee pursuant to the grant awards and/or activities as set forth in this Agreement into a Housing Revolving Loan Fund Account. For the purposes of this Agreement, Program Income is defined as gross income received by the recipient directly generated from the use of CDBG CHIP and/or HOME funds. Furthermore, the Housing Revolving Loan Fund ("RLF") is defined as a separate fund established for the purpose of accounting for Program Income and of carrying out the specific activities designated in OHCP's Housing Program Income Guidelines and Instructions Manual, which, in turn, generate payments to the fund ("RLF Funds") for the continued use in carrying out the same activities.

2. RLF Plan and Use of Funds. Grantee has adopted a Community Housing Improvement Strategy (CHIS) and a copy of the Local Housing Policy and Procedures Manual that has been previously submitted and approved by the Grantor. The Local Housing Policy and Procedures Manual must include the policies and procedures established by Grantor in the OHCP Housing Program Manual. The policy and procedures manual must include any designated administrative agent, an established board structure, loan review criteria, and procedures for workouts, delinquencies and defaults. Any changes to the Local Housing Policy and Procedures Manual must be submitted to Grantor for review and approval. Grantee shall use the Housing RLF Funds solely for the stated purposes set forth in this Agreement, OHCP's Housing Program Income General Guidelines and Instructions and the Local Housing Policy and Procedures Manual. All housing program income funds must be expended in compliance with all CHIP requirements, including those found in Grantor's Non-Participating Jurisdiction Housing Handbook and the current Ohio Consolidated Plan.

3. Reporting Requirements. Grantee shall submit Housing Semi-Annual Program Income Reports to Grantor within thirty (30) days after receipt of the June 30 and December 31 Housing Semi-Annual Program Income Report of each year. The Housing Semi-Annual Program Income Report shall include information for housing program income. Grantee shall also file an Annual Other Program Income Report due March 31 of each year in which this Agreement is in effect.

4. Compliance with General CDBG and HOME Requirements. Grantee shall comply with all applicable provisions of the statutes, rules, regulations and guidelines as passed by Congress or promulgated by the Secretary of the Department of Housing and Urban Development (HUD).

5. Compliance with Environmental Requirements. Grantee shall comply with the provisions of the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to activities undertaken with CDBG Program Income. Grantee agrees to assume responsibility for preparing Environmental Assessments and Environmental Reviews as required.

6. Prevailing Wage Rates and Labor Standards. Grantee shall comply with Section 570.603; Labor Standards of the Regulations published by HUD for Community Development Block Grants and the HOME program labor provisions and apply the federal Davis Bacon Labor Standards where required.

7. Acquisition and Relocation. Grantee shall comply with the relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementation regulations set forth in 570.488 and 49 CFR Part 24 as they apply to the activities covered by this Agreement. Grantee shall comply with the process established under the Anti-Displacement and Relocation Plan.

8. National Objective Requirements. Grantee shall ensure that all projects funded as a result of this Agreement meet the national objective of the provision of a housing related direct benefit for low- and-moderate income persons. Any projects not meeting this requirement must submit a request for waiver to Grantor. Grantor will review the request to determine if the project meets a CDBG or HOME National Objective. Written approval from Grantor must be received prior to the local jurisdiction issuing approval for the project. Costs for the project that do not meet a national objective must be charged to administration.

9. Suspension and Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other. Grantor reserves the right to suspend the administration of the Housing RLF at any time for failure of the Grantee or its designated administrative agent to administer the local Housing RLF in compliance with the OHCP Housing Program Manual which is not attached but incorporated herein by reference. Throughout this Agreement, Grantee and any designated administrative agent must continue to demonstrate administrative capacity in the administration of the Housing RLF. Failure to accurately report on the Housing RLF Funds could result in Grantor placing the Housing RLF Funds on hold or recapturing the Housing RLF Funds. Grantor also reserves the right to request the Housing RLF Funds be returned to the State of Ohio upon failure to comply with the OHCP Housing Program Manual and the Local Policy and Procedures Manual.

10. Subrecipient Agreements. Grantee shall not subgrant the Program Income funds to any other local political jurisdiction or non-profit agency. Grantee may contract with a non-profit agency to administer the Housing RLF Funds, but the funds are to remain with the Grantee. If there is a change in the designated administrative agent of the Housing RLF Funds, it is the responsibility of the Grantee to notify OHCP within fifteen days of any change in status of the designated administrative agent.

11. Term of the Agreement. This Agreement shall begin on the Effective Date and shall terminate on the Termination Date unless otherwise modified pursuant to section 19f herein. At least sixty (60) days prior to the Termination Date, Grantor will determine if the Grantee continues to have the capacity to administer the Housing RLF Funds based on the performance of the Grantee and its designated administrative agent. Grantor shall promptly notify Grantee in writing of a determination questioning administrative capacity. Grantor reserves the right to determine if the State of Ohio will renew this agreement to allow the Grantee to administer the Housing RLF, have the Grantee close out the Housing RLF by executing a CDBG or HOME Closeout Agreement or recapture the Housing RLF Funds.

12. Records, Access and Maintenance. Grantee shall establish and maintain for at least four (4) years from the expiration of this Agreement, all direct information and such records as are reasonably related to the administration of a Housing RLF as set forth in the OHCP Housing Program Manual. Both parties further agree that records required by the Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement as provided in Section 9 of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the RLF Funds, the Grantee shall, at its own cost and expense, segregate all such records related to the RLF Funds from its other records of operation.

13. Audits and Inspections. Grantee shall, at any time during normal business hours upon written notice and as often as Grantor may deem necessary, make available to Grantor, for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Agreement including, but not limited to, records of all contracts, loans and disbursements and shall permit Grantor to audit, examine and make excerpts or transcripts from such records. Grantee shall ensure that the Housing RLF Funds are audited according to the requirements of the ODOD Grant Administration Guidelines-Audits that is not attached hereto, but incorporated by reference.

14. Equal Employment Opportunity. Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, military status, age, or ancestry. Grantee shall take affirmative action to ensure that applicants are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, military status, age, or ancestry. Grantee shall, in all solicitations or advertisements or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, military status, age, or ancestry. Grantee shall incorporate the requirements of this paragraph in all its respective contracts for any of the work prescribed herein (other than subcontractors for standard commercial supplies or raw materials), and the Grantee will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

15. Liability. Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of the Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees and agents. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

16. Adherence to State and Federal Law and Regulations.

- a. General. Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement. Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax deductions, social security deductions, and any and all other taxes

or payroll deductions required for all employees engaged by Grantee in connection with the performance of the work authorized by this Agreement.

- b. Ethics. In accordance with Executive Order 2007-01S, the Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§102.01 *et seq.*, §§2921.01, 2921.42, 2921.421 and 2921.43 and §3517.13(I) and (J) and (3) will take no action inconsistent with those laws and the orders, as any of them may be amended or supplemented from time to time. The Grantee understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement, and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

17. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the Grantor of any of its rights hereunder.

18. Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Grantee must comply with Ohio Revised Code Section 2909.33 by providing Grantor a completed certification attesting that it does not provide material assistance to any organization on the U.S. Department of State exclusion list.

18. Miscellaneous.

a. Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including, but not limited to matters of validity, construction, effect and performance.

b. Forum and Venue. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

c. Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

d. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

e. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

1. In the case of the Grantor, to:

Ohio Department of Development
Office of Housing and Community Partnerships
77 South High Street, P.O. Box 1001
Columbus, Ohio 43216-1001

2. In the case of the Grantee, to:

(Insert Contact and Address)

f. Amendments or Modifications. Either party may, at any time during the term of this Agreement, request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification of such changes. The parties shall review the request for modification in terms of the regulations and goals relating to the Agreement. Should the parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the original Agreement.

g. Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

h. Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

i. Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned, subcontracted or subgranted by the Grantee without the prior express written consent of the Grantor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the last day and year set forth below.

GRANTEE:

GRANTOR:

(Name)

**State of Ohio
Department of Development**

Lisa Patt-McDaniel
Director
Ohio Department of Development

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____