

## DOWNTOWN HOUSING GRANT AGREEMENT

This Downtown Housing Grant Agreement (“Agreement”) is made as of \_\_\_\_\_, 2021, between the Charlevoix Downtown Development Authority, a Michigan public authority (the “DDA”), and \_\_\_\_\_, a Michigan \_\_\_\_\_ (the “Developer”).

### PREMISES

WHEREAS, the DDA was created pursuant to the Downtown Development Authority Act, Act 197 of the Public Acts of 1975, as amended, and recodified in Act 57 of 2018 (“Act”) by Ordinances Nos. 439 and 701 adopted by the City of Charlevoix; and [\[8\]](#)

WHEREAS, the Act recognizes as essential public purposes, the halting of property value deterioration and the promotion of economic growth; and

WHEREAS, the Act has expressly provided the DDA with the power and authority to implement programs and otherwise engage in activity that has the objective of accomplishing the foresaid purposes within the DDA district in the City of Charlevoix as set forth in the attached **Exhibit A** (“DDA District”); and

WHEREAS, pursuant to the power and authority granted to the DDA by said Act it has established the Upper Floor Housing Grant (“Housing Program”) as an incentive for property owners to improve and expand the inventory of upper floor housing, such as apartment units, condominiums and loft style units, within the DDA District and halt property value deterioration and promote economic growth; and

WHEREAS, the Housing Program also serves as a means to encourage rehabilitation of older buildings to bring them into productive use and to compliance with modern health, safety, fire and accessibility codes; and

WHEREAS, the DDA is willing to provide grants in an amount not to exceed \$25,000.00 as reimbursement for interior design assistance and building rehabilitation construction costs pursuant to the Housing Program and in accordance with the terms and provisions of this Agreement.

WHEREAS, Developer is the owner of certain real property with improvements thereon located at \_\_\_\_\_, Charlevoix, Michigan, approximating \_\_\_\_\_ square feet, as legally described in attached **Exhibit B** (“Property”), which Developer intends to renovate and improve to accommodate residential housing (“Project”); and

WHEREAS, one of the funding sources for the Project is the DDA Housing Program to which the Developer has made application for funds for design assistance, interior renovation and improvements, the description and estimated costs of which are set forth in attached **Exhibit C**; and

WHEREAS, the DDA has approved the Developer's application (“Application”) to participate in the Housing Program in accordance with the terms and provisions of this Agreement and the Application.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the DDA and Developer hereby agree as follows:

1. Recitals. The recitals accurately reflect the intent and purpose of this Agreement and are made a part hereof.
2. Award of Grants. There is hereby awarded to the Developer a grant in an amount not to exceed \$\_\_\_\_\_ to be used for interior design assistance and building rehabilitation construction costs pursuant to the terms and provisions of this Agreement.
3. Construction. The Developer shall proceed with the Project by commencing building rehabilitation within 90 days from the date hereof in an expeditious and workmanlike manner pursuant to and in accordance with the drawings/specifications attached as **Exhibit D** and shall complete the Project within 120 days after commencement of such renovation unless an extension for extenuating circumstances is approved in writing by the DDA.
4. Disbursement of Grant Proceeds. The DDA shall make interim disbursements in intervals of not less than 30 days and pursuant to the requirements of paragraph 5(C) below. The final grant disbursement shall be made upon completion of the Project.
5. Conditions for Disbursement of Grant Proceeds. The DDA’s obligation to disburse the grant proceeds is subject to and conditioned upon the following:
  - A. The Developer’s fulfillment of its obligations as set forth in this Agreement.
  - B. Developers shall use reasonable care to prevent the attachment of any construction liens to the Property. In the event that a construction lien does attach to the Property, Developer shall promptly obtain a discharge of the construction lien. During the time in which any construction lien may be attached to the Property, the DDA may, in its discretion, place the grant funds in escrow pending resolution and discharge of the construction lien(s). Upon discharge of the construction lien(s), the DDA shall disburse all currently due and past due grant proceeds to the Developer.
  - C. Developers shall have provided the DDA with such sworn statements, waivers of lien, affidavits, paid receipts and other proof of payment from Developer and from any general contractor, subcontractors, suppliers and laborers as shall be required by the DDA.
  - D. The Project shall have been completed in a timely manner and constructed in a manner satisfactory to the DDA and in accordance with **Exhibit D**.
  - E. Developer shall comply with all applicable Federal, State, or local laws, codes or ordinances, including (but not limited to) the Elliott Larsen Civil Rights Act, 1976 PA

453, as amended, MCL 37.2101 et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq.

6. Payment of Taxes. The Developer agrees to pay, or cause to be paid, all real property, personal property and other taxes due and owing with respect to the Project, as and when the same becomes due. The failure by the Developer to pay these taxes, or cause them to be paid, is an Event of Default and a breach of this Agreement whereupon all Grant funds shall be immediately repaid by the Developer.

7. Adjustments. In the event that a state agency of competent jurisdiction conducting an audit of payments made to the Developer under this Agreement or a court of competent jurisdiction determines that any portion of the payments made to the Developer under this Agreement is unlawful, the Developer shall pay back to the DDA that portion of the payments made to the Developer within 30 days of the determination made by a state agency or the court as the case may be. However, the Developer shall have the right, before any such repayment is made, to appeal on its or the DDA's behalf, any such determination made by a state agency or court as the case may be. If the Developer is unsuccessful in such an appeal, the Developer shall repay the portion of payments found to be unlawful to the DDA within 30 days of the date when the final determination is made on the appeal.

8. Indemnification of DDA and its Agents.

A. The Developer shall indemnify and hold the DDA and its members, officers, agents and employees (the "Indemnified Persons") harmless from any loss, damages, costs, expense (including reasonable attorney fees and expenses), or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims against the Indemnified Persons arising or resulting from any activity undertaken by Developer pursuant to this Agreement or if made by third parties alleging personal injuries or injury to property suffered by them while on the Property arising or resulting from, or in any way connected with, the Project. If any suit, action or proceeding is brought against any Indemnified Person, it shall be defended by counsel provided by the Developer. In any such proceeding, the Indemnified Person shall cooperate with the Developer and the Developer shall have the right to settle, compromise, pay or defend against any such claim on behalf of such Indemnified Person, except that the Developer may not settle or compromise any claim if the effect of doing so would be to subject the Indemnified Person to criminal penalties, unless such Indemnified Person gives its consent. The Developer shall not be liable for payment or settlement of any such claim or proceeding made without its consent.

B. The Developer shall not be obligated to indemnify and reimburse any Indemnified Person under subsection (A) if a court of competent jurisdiction finds that the liability in question was caused by willful misconduct or gross negligence of the involved Indemnified Person(s), unless the court determines that, despite the adjudication of liability, but in view of all circumstances of the case, the Indemnified Person(s) is (are) fairly and reasonably entitled to indemnity for the expenses which the court considers proper.

C. The Developer shall also indemnify and reimburse the DDA for all reasonable costs and expenses, including reasonable attorney fees and expenses incurred in:

- (i) taking any action requested by the Developer, or
- (ii) taking any action considered necessary by the DDA and which is authorized by this Agreement.

D. The obligations of the Developer under this paragraph shall survive any assignment of this Agreement, unless the DDA otherwise expressly and specifically agrees in writing.

9. Representations and Warranties of the Developer.

A. The Developer is duly organized and validly existing as a \_\_\_\_\_ in good standing under the laws of the State of Michigan with power under the laws of such state to carry on its business as now being conducted and has the power and the authority to own the Property.

B. There is no violation or default by the Developer under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject, wherein a default or violation would materially and adversely affect any of the transactions contemplated by, or the validity of, this Agreement. Compliance with the terms, conditions and provisions of this Agreement does not conflict with, and will not result in or constitute a breach of, or default under, any of the foregoing.

C. The Developer is not presently indicted or otherwise criminally or civilly charged by a government entity, and has not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense for the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

10. Representations and Warranties of the DDA.

A. The DDA is a public body corporate, duly existing and validly created pursuant to the Act. The DDA has taken all actions necessary to authorize the execution and delivery of this Agreement.

B. There is no action, suit, proceeding or investigation before any court, public board or body pending to which the DDA is a party, or to the best knowledge of the DDA threatened against the DDA, contesting the establishment of the DDA or the validity or binding effect of this Agreement.

11. Default.

A. Event of Default. An Event of Default shall consist of any misrepresentation or failure to comply with the terms and provisions of or carry out its obligations under this

Agreement by the Developer. In addition, an Event of Default shall include any misrepresentation made in the application by the Developer or any filing of bankruptcy or bankruptcy reorganization by the Developer.

B. Remedies. Upon the happening of an Event of Default, the DDA shall be immediately refunded all Grant proceeds. The Developer shall also be responsible for reimbursement of the DDA's costs and actual attorney fees incurred as a result of the default.[\[LB9\]](#) 12.

Miscellaneous.

A. Assignment of this Agreement. No party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of all other parties hereto. Consent may be given or withheld in the sole and absolute discretion of the party from whom consent is sought. The obligations of the Developer under this Agreement shall survive any assignment, unless the DDA otherwise specifically and expressly agrees in writing.

B. Notices. All written notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given (a) when personally delivered to the party to be given such notice or other communication, (b) on the business day that such notice or other communication is sent by facsimile or similar electronic device, in PDF format or other format that prevents the alteration of the document contents, fully prepaid, which facsimile or similar electronic communication shall promptly be confirmed by written notice, (c) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully paid, or (d) on the business day following the day such notice or other communication is sent by reputable overnight courier to the parties and the addresses set forth below.

If to the DDA:

Charlevoix Downtown Development Authority

210 State Street

Charlevoix, MI 49093

If to the Developer:

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C. Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto.

D. Entire Agreement. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except as made in this Agreement or the Application.

E. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

F. Severability. If any clause, provision or paragraph of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or paragraph shall not affect the validity of any of the remaining clauses, provisions or paragraphs of this Agreement.

G. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

H. Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

I. Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

J. Mutual Cooperation. Each party to this Agreement shall:

(i) take all actions required of it by the terms of this Agreement as expeditiously as possible;

(ii) cooperate, to the fullest extent possible, with the other party to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Project, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the construction or operation thereof;

(iii) execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or agreements as may be required by the Developer's lenders with respect to the Project to secure the Developer's financing from such lenders;

(iv) use its best efforts to assist the other party to this Agreement in the discharge of their respective obligations hereunder; and

(v) use its best efforts and cooperate with the other party to assure that all conditions precedent to the completion of the Project are timely satisfied.

K. Audit and Access to Records. The DDA reserves the right to conduct a programmatic and financial audit of the project, and the DDA may withhold payment until the audit is satisfactorily completed. The Developer will be required to maintain all pertinent records and evidence pertaining to this Agreement, including grant and any required matching funds, in accordance with generally accepted accounting principles and other procedures specified by the DDA. The DDA or any of its duly authorized representatives must have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Developer will provide proper facilities for such access and inspection. All records must be maintained for a minimum of ten (10) years after the final payment has been issued by the DDA to the Developer.

13. Permits and Approvals. The Developer shall be responsible for obtaining, at its sole cost and expense, all easements, rights-of-way, licenses, permits, approvals and any other permissions necessary for the construction of the Project.

14. Force Majeure. No party hereto shall be liable for the failure to perform its obligations hereunder if such failure is due to unforeseeable events beyond the party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes and embargoes, and delays of contractors due to such causes. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; provided, however, that the party seeking relief from its obligations under this paragraph shall notify the other parties in writing, setting forth the event giving rise to such failure to perform, within ten days following the occurrence of such event.

15. Closeout.

- A. A determination of project completion, which may include a site inspection and an audit, shall be made by the DDA or a party designated by the DDA after the Developer has completed the Project.
- B. Upon issuance of the final disbursement from the DDA, the Developer releases the DDA of all claims against the DDA arising under this Agreement. Unless otherwise provided in this Agreement or by state law, final payment under this Agreement shall not constitute a waiver of the Developer's claims against the DDA.
- C. The Developer shall immediately refund to the DDA any payments in excess of the costs allowed by this Agreement.

16. Termination.

A. This Agreement may be terminated by the DDA as follows:

1. If the Developer fails to comply with the terms and conditions of the Agreement, or with the requirements of the authorizing legislation cited on page 1, or the rules promulgated thereunder, or other applicable law or rules.[\[LB10\]](#)
2. If the Developer knowingly and willingly presents false information to the DDA for the purpose of obtaining this Agreement or any payment under this Agreement.
3. If the DDA finds that the Developer, or any of the Developer's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State[\[LB11\]](#) in an attempt to secure a subcontract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement.
4. If the Developer or any subcontractor, manufacturer, or supplier of the Developer appears in the register of persons engaging in unfair labor practices that is compiled by the Michigan Department of Licensing and Regulatory Affairs or its successor.

B. Immediately and without further liability to the DDA if the Developer, or any agent or Developer is:[\[LB12\]](#)

1. Convicted of a criminal offense incident to the application for or performance of a state, public, or private contract or subcontract;
2. Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;
3. Convicted under state or federal antitrust statutes; or
4. Convicted of any other criminal offense that, in the sole discretion of the DDA, reflects on the Developer's business integrity.
5. Added to the federal or state Suspension and Debarment list.

C. If this Agreement is terminated, the DDA reserves the right to require the Developer to repay all or a portion of funds received under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

CHARLEVOIX DOWNTOWN DEVELOPMENT  
AUTHORITY

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

Its: \_\_\_\_\_

DEVELOPER:

By \_\_\_\_\_

Its: \_\_\_\_\_

List of Exhibits

Exhibit A – DDA District

Exhibit B – Project Property Legal Description

Exhibit C – Project Estimated Costs

Exhibit D – Project Plans/Specifications