

# MINNESOTA HOUSING FINANCE AGENCY DEFERRED LOAN AGREEMENT

This Deferred Loan Agreement is between the Minnesota Housing Finance Agency (“MHFA”) and [GIVE THE FULL NAME OF THE BORROWER INCLUDING ITS ADDRESS] (the “Borrower”).

## Recitals

1. Under [Minn. Stat. §462A.39](#), MHFA is empowered to enter into this Deferred Loan Agreement.
2. MHFA is in need of the development of rental housing to serve the employees of local businesses (“Workforce Housing”) in [COUNTY], City of [CITY] pursuant to MHFA’s Workforce Housing Development Program (the “Program”).
3. The Borrower represents that it is duly qualified and agrees to perform all activities described in this Deferred Loan Agreement to the satisfaction of MHFA. The Borrower agrees to minimize administrative costs as a condition of this Deferred Loan Agreement.

## Deferred Loan Agreement

### 1 Term of Deferred Loan Agreement

#### 1.1 *Effective date:*

The effective date of this Deferred Loan Agreement is the date that this Deferred Loan Agreement has been fully executed. Notwithstanding the foregoing, if this Deferred Loan Agreement is not fully executed on or before [SPELL OUT FULL DATE (e.g., July 1, 2022)], then this Deferred Loan Agreement shall be null and void and MHFA shall have no obligation to disburse any of the Program Funds and neither party shall have any continuing obligations or responsibilities pursuant to this Deferred Loan Agreement.

The Borrower must not begin work until this Deferred Loan Agreement is fully executed and MHFA's Authorized Representative has notified the Borrower that work may commence. No funds will be disbursed to the Borrower until this Deferred Loan Agreement is fully executed.

#### 1.2 *Construction period:*

The construction period for the Program begins with the Effective Date of this Deferred Loan Agreement and continues through the later of [SPELL OUT FULL DATE (e.g., June 1, 2025)] or any extension of this period agreed to in writing by MHFA (the “Construction Period”). All funds provided through this Deferred Loan Agreement must be fully expended in compliance with this Deferred Loan Agreement by the end of the Construction Period.

#### 1.3 *Survival of Terms.*

The following clauses survive the expiration or cancellation of this Deferred Loan Agreement: 8. Liability; 9. State Audits; 11. Publicity and Endorsement; 12. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.

### 2 Duties and Contracts

#### 2.1 **Borrower’s Duties**

The Borrower has made application to MHFA for the purpose of administering a Program project in the manner described in the Borrower's application (the “Project”) which is incorporated into this Deferred Loan Agreement by reference.

The Borrower, who is not a state employee, is awarded funds to provide financial assistance to address

the need for Workforce Housing. The Project includes: **[INSERT BRIEF DESCRIPTION OF PROJECT INCLUDING TYPE (NEW CONSTRUCTION/ADAPTIVE REUSE, ETC.), AND NUMBER OF UNITS]**.

The Borrower will be in compliance with the Workforce Housing Development Program Guide, as amended (the “Program Guide”), which is incorporated into this Deferred Loan Agreement.

## 2.2 Provisions for Contracts and Sub-grants.

**(a) Contract Provisions.** The Borrower must include in any contract and subcontract, in addition to provisions that define a sound and complete agreement, such provisions that require recipients and subrecipients to comply with applicable local, state and federal laws, rules, regulations and ordinances, as well as any applicable MHFA policies.

**(b) Use of Program Funds.** The Program Funds (as defined below) awarded under this Deferred Loan Agreement may only be used by the Borrower or awarded by the Borrower to third parties as grant funds or loans in accordance with the terms of the Program Guide. All Program Funds must be used by an Eligible Project Area for the Qualified Expenditures of a Market Rate Residential Rental Property (as such terms are defined in the Program Guide). If awarded as a loan, any fees or interest charged cannot unduly enrich any parties involved beyond the approximate cost of the administrative costs associated with the Project.

## 3 Time

The Borrower must comply with all time requirements described in this Deferred Loan Agreement and the Program Guide. In the performance of this Deferred Loan Agreement, time is of the essence. Project construction must commence and be completed within the Construction Period

## 4 Loan

### 4.1 Loan Amount.

The total principal loan amount by MHFA to the Borrower under this Deferred Loan Agreement will not exceed \$**[ENTER AWARD AMOUNT]** (the “Program Funds”).

### 4.2 Repayment

The Borrower promises to pay to MHFA the Program Funds with simple interest, if any, of 0% per annum accruing on such amounts of principal as may be advanced from time to time.

Further, the Program Funds and all accrued interest, if any, less any amounts previously paid or forgiven, are due and payable in one lump sum on the earlier to occur of: (i) a Default (as described below); or (ii) the      day of     , 20     (the “Maturity Date”).

A Default occurs upon written notice by MHFA to the Borrower of noncompliance with this Deferred Loan Agreement or the Program Guide and failure of the Borrower to cure the noncompliance to the satisfaction of MHFA within 30 days of such notice.

Repayment of the Program Funds will be forgiven upon the Maturity Date provided: (i) MHFA has not given the Borrower notice of a Default; and (ii) the Borrower is in full compliance with this Deferred Loan Agreement and the Program Guide.

All amounts due are payable at the offices of MHFA, 400 Wabasha Street North, Suite 400, St. Paul, MN 55102-1109, or such other place as MHFA may designate in writing.

If a failure to pay the amounts due under this Deferred Loan Agreement occurs, and if the same is

submitted for collection by MHFA, its successor and assigns, the Borrower must pay all costs of collection, including reasonable attorney's fees.

All parties to this Deferred Loan Agreement, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor.

#### 4.3 **Disbursement**

For all disbursements of Program Funds, the Borrower must be in compliance with this Deferred Loan Agreement and the Program Guide and complete and submit a Workforce Housing Development Program Disbursement Request Form, attached to this Deferred Loan Agreement as **Exhibit A**, to MHFA for review and approval. MHFA will promptly pay the Borrower up to one third of the Program Funds on or after closing. The Borrower may request an additional one third of the Program Funds as needed upon commencement of Project construction. The remaining one third of the Program Funds will be withheld for final disbursement and will not be released until construction completion of the Project and upon completion of all reporting and monitoring requirements pursuant to this Deferred Loan Agreement.

#### 4.4 **Return of Funds**

The Borrower must promptly return to MHFA any Program Funds that have: (i) not been accounted for in a financial report to MHFA due annually or at Deferred Loan Agreement closeout; or (ii) not been used in compliance with the Program Guide.

#### 4.5 **Contracting and Bidding Requirements**

The Borrower must comply with all applicable prevailing wage requirements as further described in the Legal Addendum attached to the Program Guide.

The Borrower must not contract with vendors who are suspended or debarred in MN:

<http://www.mmd.admin.state.mn.us/debarredreport.asp>

#### 4.6 **Prepayment**

The Program Funds may be prepaid in whole or in part at any time without premium or penalty; provided, however, that payment by Borrower to MHFA of the amount of the Program Funds or any portion thereof shall not be deemed to be or constitute a release of Borrower from the terms or requirements of this Deferred Loan Agreement.

### 5 **Conditions of Payment**

All activities performed by the Borrower under this Deferred Loan Agreement must be performed to MHFA's satisfaction, as determined at the sole discretion of MHFA's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Borrower will be responsible for repaying any Program Funds found by MHFA to be noncompliant with this Deferred Loan Agreement or used in violation of federal, state, or local law.

### 6 **Authorized Representative**

MHFA's Authorized Representative is **Sara Bunn, Program Manager, 651.296.9827, sara.bunn@state.mn.us, 400 Wabasha St N, Suite 400, St. Paul, MN 55102** or her successor, and has the responsibility to monitor the Borrower's performance under this Deferred Loan Agreement.

The Borrower's Authorized Representative is **[NAME, TITLE, ADDRESS, TELEPHONE NUMBER, EMAIL]**. If the Borrower's Authorized Representative changes at any time during this Deferred Loan Agreement, the Borrower must immediately notify MHFA.

## **7 Assignment Amendments, Waiver, and Deferred Loan Agreement Complete**

### **7.1 Assignment**

The Borrower shall neither assign nor transfer any rights or obligations under this Deferred Loan Agreement without the prior written consent of MHFA, approved by the same parties who executed and approved this Deferred Loan Agreement, or their successors in office.

### **7.2 Amendments**

Any amendments to this Deferred Loan Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Deferred Loan Agreement, or their successors in office.

### **7.3 Waiver**

If MHFA fails to enforce any provision of this Deferred Loan Agreement, that failure does not waive the provision or MHFA's right to enforce it.

### **7.4 Deferred Loan Agreement Complete**

This Deferred Loan Agreement contains all negotiations and agreements between MHFA and the Borrower. No other understanding regarding this Deferred Loan Agreement, whether written or oral, may be used to bind either party.

## **8 Liability**

The Borrower must indemnify, save, and hold MHFA, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by MHFA, arising from the performance of this Deferred Loan Agreement by the Borrower or the Borrower's agents or employees. This clause will not be construed to bar any legal remedies the Borrower may have for MHFA's failure to fulfill its obligations under this Deferred Loan Agreement.

## **9 State Audits**

Under [Minn. Stat. § 16B.98](#), Subd.8, the Borrower's books, records, documents, and accounting procedures and practices of the Borrower or any other party relevant to this Deferred Loan Agreement or transaction are subject to examination by MHFA and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Deferred Loan Agreement, receipt and approval of all final reports, or the required period of time to satisfy all MHFA program retention requirements, whichever is later.

## **10 Workers Compensation**

The Borrower certifies that it is in compliance with [Minn. Stat. § 176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Borrower's employees and agents will not be considered MHFA employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MHFA's obligation or responsibility.

## **11 Publicity and Endorsement**

### **11.1 Publicity**

Any publicity regarding the subject matter of this Deferred Loan Agreement must identify MHFA as the sponsoring agency and must not be released without prior written approval from MHFA's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Borrower individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Deferred Loan Agreement.

### **11.2 Endorsement**

The Borrower must not claim that MHFA endorses its products or services.

## **12 Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this Deferred Loan Agreement. Venue for all legal proceedings out of this Deferred Loan Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## **13 Termination**

MHFA may immediately terminate this Deferred Loan Agreement if MHFA finds that there has been a failure to comply with the provisions of this Deferred Loan Agreement or the Program Guide, that reasonable progress has not been made or that the purposes for which the funds were loaned have not been or will not be fulfilled. MHFA may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

## **14 Data Disclosure**

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Borrower consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to MHFA, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Borrower to file state tax returns and pay delinquent state tax liabilities, if any.

## **15 Responsible Contractor Requirement**

The Borrower agrees that it and its contractors will fully comply with all applicable provisions contained in [Minn. Stat. §16C.285](#), as amended.

**2. BORROWER**

The Borrower certifies that the appropriate person(s) has/have executed the Deferred Loan Agreement on behalf of the Borrower as required by applicable articles, bylaws, resolutions, or ordinances.

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

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

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

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

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

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

**3. MINNESOTA HOUSING FINANCE AGENCY**

By: \_\_\_\_\_  
(with delegated authority)

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

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

SAMPLE

Distribution:  
Agency  
Borrower  
MHFA's Authorized Representative

**EXHIBIT A**

**Workforce Housing Development Program Disbursement Request Form**

SAMPLE

**Summary**

This form must be completed, signed, and submitted to MHFA prior to receiving a disbursement of funds. To complete the form, enter the amount of funds you are requesting and a summary of what the funds will be used for. Have the form signed by an Authorized Representative. Submit the completed form to Sara Bunn at [WorkforceHousingDevProg.MHFA@state.mn.us](mailto:WorkforceHousingDevProg.MHFA@state.mn.us).

**Disbursement Request and Justification**

Amount Requested (not to exceed one-third of the total award): \_\_\_\_\_

Use the space below to document what the funds will be used for:

\_\_\_\_\_

**Authorized Representative Signature**

Authorized Representative Name: \_\_\_\_\_

Authorized Representative Title: \_\_\_\_\_

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

Authorized Representative  
Signature: \_\_\_\_\_