

**NEW HOUSING MODEL FOR HOMELESS DEVELOPMENT AGREEMENT
BETWEEN DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND
PLOVER PLACE, LLC**

THIS AGREEMENT entered into as of _____, 2023, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as “DEDA”, and PLOVER PLACE, LLC, a Minnesota limited liability company, which is wholly owned by ONE ROOF COMMUNITY HOUSING, a 501(c)(3) non-profit corporation, created and existing under Minnesota Statute (1989) Chapter 317A, hereinafter referred to as "Developer".

WHEREAS, the City of Duluth (“City”) received an allocation of funds under the American Rescue Plan Act of 2021 sec. 9901, Pub. L. 117-2 codified as 42 U.S.C 802 et seq., (“ARPA”) from the federal government for the purpose of ameliorating the impacts of the COVID-19 pandemic which would include actions to ameliorate the shortage of affordable housing to persons of low and moderate income; and

WHEREAS, City Council approved the targeted allocation of \$19.2 million for affordable housing at its July 19, 2021 meeting via resolution 21-0515R with City staff recommending an allocation plan that included funding specifically for housing people experiencing homelessness; and

WHEREAS, City Council in response to the modified revenue loss calculation which provided flexibility in the City’s capacity to fund projects out of the general fund approved transfer of One Million Six Hundred Thousand Dollars (\$1,600,000) to DEDA on June 27, 2022 via resolution 22-0520R and which DEDA accepted via resolution 22D-38 on June 22, 2022 to provide Project funding; and

WHEREAS, contemporaneously Developer has sought out and been awarded matching funds under ARPA through St. Louis County in the amount of One Million Six Hundred Thousand Dollars (\$1,600,000).

WHEREAS, Developer in partnership with a working group of Duluth professionals in social services, low-income housing, architecture, and construction industries developed the New Housing Model for Homeless in 2020 which achieves harmony in the amount of service and support, number of occupants, and low development and operating costs to ensure success for both occupants and Developer, and

WHEREAS, Developer has acquired the fee ownership of property located at West Palm Street and South Robin Avenue, Duluth, Minnesota, as described on Exhibit A attached hereto and made a part hereof, and has proposed the Project described and defined herein at Article I, Paragraph K.).

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed.
- B. City: means the City of Duluth.
- C. Coordinated Entry System: shall mean St. Louis County Continuum of Care's centralized and coordinated process designed to coordinate program participant intake and assessment and provision of referrals for homeless individuals seeking housing within St. Louis County's geographic region.
- D. DEDA: means the Duluth Economic Development Authority.
- E. Developer: means Plover Place, LLC.
- F. Director: means the Director of City of Duluth Planning and Economic Development Department or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- G. Disbursement Agreement: means the construction disbursement agreement set forth in Exhibit F with Arrowhead Abstract & Title Co. for disbursement of ARPA funds to the Developer made through City of Duluth, DEDA and St. Louis County.
- H. Eligible Project Costs: means those Project Costs set forth in Exhibit B which may be legally funded with DEDA assistance. Eligible Project Costs are estimated to be at least Three Million, Two Hundred Forty Thousand Dollars (\$3,240,000).

- I. Homelessness: means an individual or family who lacks a fixed, regular, and adequate nighttime residence as defined by 24 CFR § 578.3.
- J. Plans: means the plans, specifications and elevations for the Project together with detailed utility and landscaping plans and elevations for the Project.
- K. Project: means the construction of two (2) discreet two-story structures, not less than twelve (12) single occupancy units for each building for a total of twenty four (24) single occupancy units of which will be occupied by homeless individuals of which four (4) units will be conditionally reserved for rental to homeless veterans all of which to be referred through the St. Louis County Coordinated Entry System, all at cost not less than Three Million, Two Hundred Forty Thousand Dollars (\$3,240,000), all according to the plans approved by the Director and pursuant to required City approvals. The four (4) units conditionally reserved for homeless veterans shall not be specifically identified units, but rather, shall refer to any four (4) of the units. Developer will use its best efforts to rent any unit which becomes available for occupancy when current residency in the Project of veterans who had been homeless at the time of their becoming residents of Project to a homeless veteran before being offered to non-veterans experiencing homelessness.
- L. Project Costs: shall mean the sum of the Eligible Project Costs as described on Exhibit B attached hereto and made a part hereof with the consent of the Director and having demonstrated the availability of funds to pay for said additional costs.
- M. Project Funding: means the equivalent of One Million Six Hundred Thousand Dollars (\$1,600,000) in project assistance for the Project as allocated from the City of Duluth general fund and transferred to DEDA for assistance to the Project.
- N. Property: means that real property located in St. Louis County, Minnesota, described on Exhibit A attached hereto and made a part hereof which description will be revised upon creation and delivery to DEDA of a survey showing the exact portions of current Exhibit A which will be devoted to the Project in compliance with City rules and regulations. The Property is subject to minor subdivision adjustments which are Developer's responsibility to undertake following review by DEDA counsel.

ARTICLE II

Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to the Director the following items:

- A. Title. Proof reasonably satisfactory to the Director that Developer owns the Property in fee simple.
- B. Construction Costs. Developer's certified estimate of the total cost of the construction of the Project.
- C. Construction Contract. A copy of the executed contract between Developer and contractor (or contractors) necessary to complete the construction of the Project in accordance with Plans approved pursuant to Article III. Such contract shall provide that payments for the work thereunder are the sole obligation of Developer. Such contract(s) shall include the requirement that said contractor(s) agree to enter into a Project Labor Agreement conforming to the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended, as set forth in Exhibit C attached hereto and made a part hereof and to conform to the Community Benefits Requirements as set forth in Exhibit D, Memorandum of Understanding, attached hereto and made a part hereof and that the laborers, mechanics or apprentice-trainees employed in the construction of the Project. to be paid at wage rates equal to or greater than those prevailing wage rate as defined in Section 2-25 of the Duluth City Code, 1959, as amended and regulations related thereto. All payrolls for the construction trades performing work on the Project must be submitted to the Director on a monthly basis. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- D. Construction Financing. Copies of loan documents and other financing commitments, if required to be obtained by Developer. It is noted that a City grant and a St. Louis County grant in like amount appear to cover all of the costs and so construction financing would be for the difference between the non-financing sources identified in Exhibit B and any changes agreed to by the Director, unless Developer contributes it on its own or from another grant source.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor under the laws of the State of Minnesota describing precisely the site of the Property in accord with

the provisions of Article I, Section M.

ARTICLE III

Project Plans

- A. Plans, Specifications and Elevations. No less than thirty (30) days prior to the commencement of construction of the Project, or such lesser time as approved by the Director, Developer shall submit the Plans for the Project to the Director for approval. Developer shall be solely responsible for the cost of developing and producing all plans and specifications for the Project and for any modifications thereto. All such Plans shall be in conformance with this Agreement, with the schematic design previously submitted to the Director which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of the City, the State of Minnesota and the United States of America. The Director shall review the Plans within fifteen (15) days of submission of the Plans by Developer. The Director's approval or rejection shall be provided to the Developer in writing. If the Director rejects the Plans in whole or in part as not following the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected Plans meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected Plans herein provided for with respect to the originally submitted Plans shall continue to apply until said Plans have been approved in writing by the Director. The Director's approval of Developer's Plans shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances or constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.
- B. Changes after Initial Approval. Any material or substantial changes made to Plans by Developer after initial review of the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

ARTICLE IV

Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles II and III above, but in no event later than January 1, 2024, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article III. Said construction work shall be completed not later than December 31, 2025. Notwithstanding the above, the construction period may be extended for up to one hundred twenty (120) days upon the prior written approval of the Director.
- B. Developer to Bear All Costs. Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.
- C. Progress Reports. Until construction of the entire Project is complete, Developer shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project and said remediation. Additionally, upon reasonable notice, the Developer also agrees that it will, subject to standard construction industry site safety protocols, permit City and DEDA access to the Property and will allow representatives of the Director to inspect the progress of the work. Monthly site inspections/draw meetings will be conducted by the Developer; the City, DEDA and St. Louis County will be encouraged to attend and participate.
- D. Project Costs/Certificate of Completion. With each monthly draw, Developer shall submit to the Director a complete draw schedule and submission which have been approved by Developer and submitted to Arrowhead Abstract & Title Company ("Title Company"). Funds shall be disbursed pursuant to a disbursement agreement agreed to between Developer and DEDA and approved by Director ("Disbursement Agreement"). City and DEDA's representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6) years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence satisfactory to the Director of such costs and of completion by Developer of the construction of the Project in accordance with this Agreement, and upon written request from Developer, the Director will furnish to Developer a Certificate of Completion in the

form of that attached hereto as Exhibit E so certifying. A Certificate of Completion shall not be issued until all elements of the Project have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be recorded against the Property.

ARTICLE V

DEDA Payment Obligations

- A. **Disbursement of Funds:** DEDA agrees to pay construction costs incurred by Developer pursuant to the Disbursement Agreement attached hereto as Exhibit F. The Disbursement Agreement will call for draws to be submitted to Title Company who will disburse funds obtained from DEDA and St. Louis County. It is understood that St. Louis County will make an initial advance to pay for the agreed deposit for the modular units being constructed offsite. This advance will occur before the commencement of construction. Upon the commencement of construction, monies disbursed will be from DEDA until DEDA has disbursed the same amount as St. Louis County and thereafter DEDA and St. Louis County will each, until their funds are exhausted, pay fifty percent (50%) of each draw per the Disbursement Agreement to Title Company, subject to a five percent (5%) retention by DEDA. The final payment of five percent (5%) shall be made pursuant to this Agreement when a Certificate of Occupancy is issued by the Director.

ARTICLE VI

Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with industry standards, Developer shall:

- A. **Maintenance.** At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Project and the Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all

roofing systems as well as outside maintenance including snow removal, grass cutting and landscape maintenance, parking areas and area cleaning if applicable, repair and striping and all other exterior maintenance to said Property and the Project.

- B. Rental Restriction; Reporting: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XIII below, the units in the Project that are to be reserved for individuals experiencing homelessness as described in the definition of the Project and that all of the units be occupied by residents with a household income at the time of initial occupancy not to exceed sixty percent (60%) of the greater of the area or State median income, adjusted for family size, as determined by the United States Department of Housing and Urban Development. Rents shall not exceed thirty percent (30%) of sixty percent (60%) of the greater of the area or State median income, adjusted for family size, as determined by the United States Department of Housing and Urban Development. No later than January 30th of each year, the Developer shall provide such reports and documentation as the Director shall reasonably request demonstrating that all units had been so rented to such persons during the entirety of the prior calendar year.
- C. Utilities. Unless currently and validly disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.
- D. Licenses and Permits. Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and the Property and to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. Conduct its affairs and carry on its business and operations with respect to the Project and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the

Project and the Property.

- F. Payment of Taxes. Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Project or the Property, subject to the right to contest in good faith in accordance with Minnesota law.
- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Project and the Property and all other charges lawfully made by any governmental body for public improvements.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.
- I. Living Wage. Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the “Duluth Living Wage Ordinance”) and to require those construction workers directly employed in the construction of the Project to be paid Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code

ARTICLE VII

Provision against Liens, Assignments and Transfers

- A. Provision against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

- B. Transfers prior to Issuance of a Certificate of Completion. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the issuance of a Certificate of Completion, Developer represents and agrees that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder. Prior to the issuance of a Certificate of Completion, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of DEDA.
- C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property to provide security for the construction and permanent financing. In addition, Developer is authorized to lease the housing units to tenants at all times without the approval of DEDA.
- D. Transfers after Issuance of a Certificate of Completion.
- a. Following the issuance of a Certificate of Completion, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of DEDA, which consent shall not be unreasonably withheld, provided the following has been satisfied: Thirty days' prior written notice of the transfer is provided to the Director.
 - b. The transferee shall agree by written commitment to DEDA to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and Certification of Construction of the Project. The commitment shall comply with the terms of this Paragraph 2 and shall be approved to the Director.
 - c. Failure to comply with the requirement of subsection 1 and 2 above shall render such purported transfer null and void.

- E. Modification; Subordination. In the event any portion of the Developer's funds is provided through mortgage financing, subject to the following, DEDA agrees to subordinate its rights under this Agreement to the holder of any mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to DEDA. Provided, however, that the form of any such subordination shall specifically require that in the event that the holder of any such mortgage and/or any successor in interest thereto becomes the owner of the Property, such holder or successor in interest shall continue to operate the Project in a manner required by Paragraph B of Article VII above.

ARTICLE VIII

Indemnification

- A. Generally. Developer shall, to the fullest extent permitted by law, protect, indemnify and save the City and DEDA and their officers, agents, servants, employees and any person who controls City and DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:
1. Any injury to or death of any person or damage to property in or upon the Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
 2. Any violation by Developer of any provision of this Agreement.
 3. Any violation of any contract, agreement or restriction related to the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
 4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

- B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the City, DEDA and their officers, agents, servants and employees and any person who controls the City or DEDA within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.
- C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA with respect to which indemnity may be sought against Developer, DEDA shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

- D. Exceptions to Indemnification. In no event shall Developer be required to indemnify DEDA under this Article for liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising solely from the negligent or intentional misconduct of DEDA or their officers, agents, servants, employees.

ARTICLE IX

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

- A. Insurance during Construction. Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:
1. Property Insurance. Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.
 2. Public Liability Insurance. Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property damage liability coverage, with XCU

exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City and DEDA shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnity provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance. Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer, City and DEDA hereby mutually waive any and all claims or cause of action against the other party for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance

proceeds payable in the event of such loss.

2. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. The City and DEDA shall be named as additional insureds therein. Insurance shall cover:
 - a. Public liability, including premises and operations coverage;
 - b. Independent contractors--protective contingent liability;
 - c. Personal injury;
 - d. Owned, non-owned and hired vehicles;
 - e. Contractual liability covering the indemnity obligations set forth herein;
 - f. Products--completed operations.
 3. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.
- C. Modification of Insurance Requirements. It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect.
- D. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.

- E. Certifications. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA and City thirty (30) days' written notice prior to cancellation or modification of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, or construct improvements in a manner which is approved by DEDA, such approval which shall not be unreasonably withheld, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction. Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.
- G. Reconstruction Obligation Contingency: Nothing to the contrary in Paragraph F above, in the event that the Project is substantially or totally destroyed and the parties agree in good faith that under present economic or social conditions the Project is no longer economically viable or does not constitute the highest and best use of the Property, the parties hereby commit to meet and confer in good faith to determine the use of the Property which will be of greatest economic, social and practical use to the Developer and to DEDA, and use their best efforts to negotiate an amendment of this Agreement to implement that use and to apply the proceeds of any insurance to implementation of that use.

ARTICLE X

Defaults and Remedies Therefor

- A. Developer's Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable.
1. Developer shall fail to pay real estate taxes as and when due and payable.

2. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
3. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property or Developer loses title to the Project or the Property or both.
4. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

B. DEDA's Remedies for Developer's Defaults. DEDA shall have the following remedies in the event of a default:

1. Terminate this Agreement or the payment of Project and Supplemental project funding, or both.
2. Withhold the performance of any obligation owed by DEDA under this Agreement or the payment of Project and Supplemental Project Funding, or both.
3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.

4. Cease or suspend making payments under this Agreement and the payment of American Rescue Plan Act funding.
 5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
 6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.
- C. Non-Waiver. The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or of any other obligation of Developer under this Agreement. To be effective, any waiver of any default by Developer hereunder must be in writing by the Director.
- D. Default by DEDA. The failure of DEDA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an event of default by DEDA. Whenever an event of default occurs by DEDA, Developer shall be entitled to all remedies available at law or equity, and Developer may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- E. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- F. Attorneys' Fees. In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XI

Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA will perform all of its obligations under this Agreement.
- D. Based on reasonable knowledge and belief, DEDA believes that the Project contemplated by this Agreement is in conformance with the development objectives set forth in the City's Comprehensive Plan and area wide goals to reduce homelessness.
- E. As of the execution of this Agreement, the City have approved the Pre-business Subsidy Report accordance with the requirements of the Business Subsidy Act.

ARTICLE XII

Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is a Minnesota limited liability company duly organized and authorized to transact business in the State, it is fully competent to acquire the Property and to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State, it has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its member.

- B. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- C. As of the date hereof, no actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.
- D. Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and payment of prevailing wages). The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.
- E. As of the date hereof, Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to DEDA, City or any third party under this Agreement to be true, correct, and complete in all material respects.

- J. That without the assistance to be provided by DEDA and St. Louis County hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the assistance to be provided for hereunder, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

ARTICLE XIII

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of ten (10) years from the date of issuance of the Certificate of Completion. Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

ARTICLE XIV

Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

ARTICLE XV

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:	DEDA
	Room 160 City Hall
	411 West First Street
	Duluth, MN 55802
	Attn: Executive Director

In the case of Developer: Plover Place, LLC
c/o One Roof Community Housing
12 E 4th Street
Duluth, MN 55805
Attn: Executive Director

With Copy to: Hanft Fride, A Professional Association
Attn: William M. Burns
130 West Superior Street
Suite 1000 U.S. Bank Place
Duluth, MN 55802

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section

ARTICLE XVI

Recordation

Immediately upon their execution, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA executed original copies of the Agreement showing the date and document numbers of record, or certified copies of the filed original documents.

ARTICLE XVII

Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by DEDA or the Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between DEDA, Developer and/or any third party.

ARTICLE XVIII

Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be held in Duluth, Minnesota.

ARTICLE XIX

Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

ARTICLE XX

Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

ARTICLE XXI

Title of Articles

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE XXII

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XXIII

Unavoidable Delays

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, pandemics or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

ARTICLE XXIV

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

[Signature pages follow]

PLOVER PLACE, LLC

By _____
Jeff Corey, Executive Director
of One Roof Community Housing,
Its Sole Member

STATE OF MINNESOTA)
) ss.
COUNTY OF ST LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by Jeff Corey, the Executive Director of One Roof Community Housing, a Minnesota non-profit
corporation, the Sole Member of Plover Place, LLC, a limited liability company under the laws of
the State of Minnesota on behalf of said limited liability company.

Notary Public

Exhibit A

Legal Description of Property

[TO BE FINALIZED BY AGREED SURVEY]

That real property legally described as follows

LOTS 20 THRU 22, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION and

LOTS 23 THRU 28, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION and

ALL OF LOT 29 AND LOT 30 EX WLY 33FT, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION
and

WLY 33 FT OF LOT 30, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION

St. Louis County, Minnesota

PID: 010-0880-01850, 010-0880-01845, 010-0880-01780 and 010-0880-01750

Exhibit B

Eligible Project Costs

Plover Place - New Model for Homeless Individuals - Two 12 unit Buildings, 4160 SF each
5/24/2022

SOURCES

Total Development Cost from Development Costs tab:

\$3,240,000

PERMANENT CAPITAL SOURCES OF FUNDING

Name of Source	Term (Years)	Rate	Amount	Per Unit
City of Duluth - ARPA			1,600,000	66,667
St. Louis County Funding			1,600,000	66,667
Sales Tax Rebate			40,000	1,667
Total Permanent Financing			3,240,000	135,000

DEVELOPMENT COSTS

		Total Costs	Per Unit	Comments
ACQUISITION or REFINANCE EXISTING DEBT				
Land		15,000	625	St MN Tax forfeit Land-in process
Existing Structures		0	0	
Demolition		0	0	
Acquisition/Refinance Subtotal		15,000		
Other	Title Insurance/Clear Title from Tax	0	0	Arrowhead Abstract - Fees determined below
Holding Costs		0	0	
Acquisition/Refinance Total		15,000	0	
CONSTRUCTION				
New Construction				
Residential w/shed(s)	244/sf, includes prevailing wage	2,034,725	84,780	2 modular bldgs - solar for heat/cool/modular slab on grade
Security		50,000		ESC - Security/Cameras/cable two buildings together
Other	landscaping/fencing	50,000		privacy within neighborhood
Other	soil remediation	100,000		previous soil borings indicate correction necessary
New Construction Subtotal		2,234,725	93,114	
Construction Contingency	3.50%	122,910		
Total Construction Costs		2,357,635	98,235	
PROFESSIONAL FEES				
Architect's Fee		92,000	3,833	Carly Coulson Architect contract
Surveys		5,000	208	site survey, pins for building, as built
Soil Borings		7,250	302	Twin Ports Testing-complete
Sewer-Water Access Charge	CAF	17,500	729	WLLSD
Other Local Fees	zoning app, permits	500	21	no special zoning or variances required
Appraisal Fee		0	0	none required/no mortgage
Energy Consultant		0	0	Carly Coulson providing energy modeling
Environmental Assessment		0	0	None required/MPCA site checked-no previous issues
Furnishings and Equipment		175,000	7,292	24 units, common area, office equipment, wifi set up, etc.
Legal Fees		15,000	625	creation of LLC, dev. Agreements, etc.
Other Fees	Gradual Lease Up- Start-Up Costs	150,000	6,250	funds necessary before full rental/service funds flow
Other Fees	soft cost contingency	12,115	505	
Professional Fees Total		474,365	19,765	
DEVELOPER FEE				
Developer Fee		320,000	13,333	
Developer Fee Total		320,000	13,333	
FINANCING COSTS				
Construction Period Costs				
Hazard and Liability Insurance		12,500	521	Property Ins per agent/1st year operations & liability during const
Taxes During Construction		1,000	42	
Title and Recording		3,000	125	title insurance and cost to clear title from tax forfeiture
Financing Costs Total		16,500	688	
TOTAL MORTGAGEABLE COSTS		3,185,000	132,021	
RESERVES AND NON-MORTGAGEABLE COSTS				
Operating & Maintn - 1st year		40,000	1,667	20k each operations and maintenance to fund 1st year
Non-Mortgageable Costs Total		40,000	1,667	
TOTAL DEVELOPMENT COST				
Total Development Costs		3,240,000	135,000	

Notes

Exhibit D

[FINAL AGREEMENT TO BE NEGOTIATED BETWEEN DEDA AND DEVELOPER THROUGH THEIR LEGAL COUNSEL]

Memorandum of Understanding Regarding The COMMUNITY BENEFITS PROGRAM As it applies to the Fairmont Cottage Village Project

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this ____ day of _____, 20__ between the City of Duluth through its Workforce Development Department, (the “City”), _____, (the “Developer”), and _____, (the “Contractor”) for the purpose of memorializing the commitments between the parties to implement the City’s Community Benefits Program (the “Program”) as hereinafter set forth in conjunction with the construction of the Plover Place Project. The Developer is the developer of the Project and the Contractor is a contractor under contract with the Developer to perform work on the Project.

The City has determined that it is critical to the economic vitality of the City and its citizens that construction projects receiving City support commit to assisting in developing a trained and skilled workforce. In acknowledgement of this goal, the City, the Developer, and the Contractor agree to implement the Program as hereinafter set forth in this MOU and to cooperate fully with the City’s Workforce Development Department to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Project covered by this MOU to so use their best efforts to implement the Program.

I. Definitions

For the purposes of this MOU, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor’s ability and the means at its disposal.
- B. Best Efforts Plan: shall mean a plan developed and approved between the Contractor and the Workforce Development Department to implement the Contractor’s Best Efforts obligations under this MOU.
- C. Contractor: shall mean the Contractor named above performing work on the Project, and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on the Project shall count toward the Community Benefits Goals outlined in this MOU. An individual with one or more of the following characteristics shall be considered an Eligible Worker:
 - Woman;
 - Person of color;
 - Is currently homeless;
 - Has received public assistance of any kind within the last 12 months;
 - Has a criminal record of conviction;

- Is currently in, or has been emancipated from, the public foster care system;
 - Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
 - Has a disability, including disabled veterans;
 - Has a household income below 200% of Federal Poverty Level.
- E. Program: shall mean the Community Benefits Program as set forth in this MOU.
- F. Project: shall mean the construction of the Plover Place Project.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by this Agreement.
- H. Work Hours: shall mean the total number of hours of construction trade work performed on the Project by Eligible Workers.

II PROGRAM GOALS

All Contractors entering into contracts for the Project will use their best efforts, as described below, in the performance of those contracts to attain the following Program goals:

- A. Eligible Worker—General:
For the Project, the Contractor shall use its best efforts to cause ten percent (10%) of total hours of work performed with respect to the Project to be Work Hours performed by Eligible Workers.
- B. Women
One-half of Work Hours as defined herein shall be performed by Eligible Workers who are women.

III DEVELOPER AND CONTRACTOR—BEST EFFORT

- A. Plan
Within Thirty (30) days of the date the Contractor executes a contract for the Project or prior to commencement of work on the Project by the Contractor, whichever is earlier, Contractor shall have agreed with the Workforce Development Department to a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. The Contractor shall not commence construction of the Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan may include but shall not be limited to the following commitments by the Contractor:
1. To participate in local job fairs and hiring events, including those at high schools, CareerForce, and Lake Superior College.
 2. To proactively work with the Workforce Development Department and with unions with which they have agreements to sponsor new Eligible Workers into such union's apprenticeship programs.
 3. To proactively work with Native American tribes and appropriate community organizations to recruit Eligible Workers.
 4. To support and actively participate in apprenticeship exploration programs and other construction career training opportunities.

5. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.
6. To take such other actions as is reasonably agreed between Contractor and the Workforce Development Department that will encourage participation of Eligible Workers in the construction of Project, while not adding cost to the Project.
7. To take, and to require its Subcontractors to take, appropriate corrective action when notified by the Workforce Development Department that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting

No later than Thirty (30) days following the end of the month in which Work Hours are performed on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.

2. Completion Report

No later than Sixty (60) days following the end of completion of construction on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the Completion Report establishes that the Program Goals has not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any explanations or extenuating circumstances for not having met the Program Goals.

IV. CITY-PROGRAM OBLIGATIONS

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for the Project covered by this Agreement.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and Apprenticeship programs to build accessible pathways into employment in the building and

construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.

- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances provided by Contractor or any Subcontractor for not having met the Program Goals.

CITY OF DULUTH, by its Workforce Development Department

By: _____
Its Director

EXHIBIT C
[REVISION TO CONFORM TO THE FACT THAT PLOVER PLACE, LLC IS OWNER OF PROPERTY]
CITY OF DULUTH
PROJECT LABOR AGREEMENT TEMPLATE

ARTICLE I
PURPOSE

This Agreement is entered into as of the date of attestation by the City Clerk, by and between **Ideal Homes of Barnum, Inc.**, a Minnesota corporation, its successors or assigns (hereinafter “Project Contractor”), and the City of Duluth, (hereinafter “Owner”¹) and the Duluth Building and Construction Trade Council, on behalf of its affiliated local unions, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement (hereinafter collectively called the “Union or Unions”), with respect to the construction of the [Click or tap here to enter text.](#) (hereinafter “Project”).

The term “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to [Click or tap here to enter text.](#) alone is intended, the term “Project Contractor” is used.

The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to establish a framework for labor-management cooperation and stability. The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

¹ Where the work is performed under Contract with the City of Duluth, the “Owner” is the City of Duluth. Where the Owner receives financial assistance or payment from the City, the Owner is the corporation, firm or other entity that is receiving the assistance or payment.

ARTICLE II

SCOPE OF AGREEMENT

Section 1. This Project Labor Agreement shall apply and is limited to all construction work included in all bid categories for the Project under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: [Click or tap here to enter text.](#)

Section 2. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Labor Agreement by executing the “Agreement to be Bound” form attached as Exhibit 1 prior to commencing work. This Project Labor Agreement is a material term of the bid specifications for the Project and therefore, regardless of whether a contractor executes this Agreement, by virtue of the owner and/or Project Contractor accepting the bid offer of the Contractor, a Contractor who performs work on this project is bound to this PLA regardless of their execution of this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, The National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI and VII of this Project Labor Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area or national agreement.

Section 3. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 5. The Owner and/or Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 6. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Labor Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

Section 9. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisor employees as defined by the National Labor Relations Act. No Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. However, any Contractor performing work on the Project which is not party to a Local Area Labor Agreement for a craft employed by the Contractor, agrees to install hourly wage rates, hours, fringe benefit contributions, referral procedures and all other terms and conditions of employment as fully set forth in the applicable Local Area Agreement as described in Schedule A for work on the Project for each craft employed by the Contractor. But in no event shall the wages be less than the wages that are applicable to this project under the Minnesota Prevailing Wage Act, Minn. Stat. § 177.43. All employees covered by this Agreement shall be classified in accordance with the work performed. Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the covered project. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing covered work.

Section 10. The Contractors agree to timely pay contributions to the established employee benefit funds in the amounts designated in the Local Area Labor Agreements attached as Schedule A.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 11. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, ready mix, asphalt or other similar material and all workers removing any materials from the construction site shall receive a total package of wages and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated General Contractors of America, or the Highway Heavy Prevailing Wage Schedule, whichever is greater.

ARTICLE III
UNION RECOGNITION AND UNION SECURITY

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives comply fully with the posted visitor and security and safety rules of the Project.

ARTICLE IV
REFERRAL OF EMPLOYEES

Applicants for the various classifications covered by this Agreement required by the Employer or Contractors on the Project shall be referred to the Contractors by the Unions. The Unions represent that its local unions administer and control their referrals and it is agreed that these referrals will be made in a non-discriminatory manner and in full compliance with Federal and State laws.

ARTICLE V
MANAGEMENT'S RIGHTS

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement or the applicable local area agreements, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause.

ARTICLE VI
WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site or any site of a contractor or supplier necessary for the performance of work at the project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than thirty (30) days.

Section 3. The Unions shall not be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. Any party alleging a breach of this Article shall have the right to petition a court for temporary and permanent injunctive relief. The parties agree that the moving party, upon proving a breach of this Agreement, shall be entitled to temporary and permanent injunctive relief.

ARTICLE VII **SAFETY**

The parties are mutually committed to promoting a safe working environment for all personnel at the job site. It shall be the responsibility of each employer to which this PLA applies to provide and maintain safe working conditions for its employees, and to comply with all applicable federal, state and local health and safety laws and regulations.

ARTICLE VIII **UNION-MANAGEMENT COOPERATION COMMITTEE**

The parties to this Agreement agree to form a Union-Management Committee, consisting of signatory unions, contractors, and representatives of the City of Duluth. The purpose of the Committee is to ensure cooperation on matters of mutual concern, including productivity, quality of work, safety and health.

ARTICLE IX **DISPUTES AND GRIEVANCES**

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually realize the importance to all parties to maintain continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Labor Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, or knowledge of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven (7) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or his or her designee of a Local Union and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) neutral arbitrators from which the Arbitrator shall be selected. The parties shall alternatively strike arbitrators from the list until one remains, who shall preside at the hearing. The party striking first shall be determined by the flip of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE X

JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor’s assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE XI **SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE XII **HELMETS TO HARDHATS**

Section 1. The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIII
LABOR HARMONY CLAUSE

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on the Project and shall submit a labor harmony plan to demonstrate how this will be done. "Harmony" shall include the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slowdowns, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the Project. The labor harmony plan should include the company's labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower-tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the Owner or Project Contractor may have, including without limitation the right to terminate the contract.

ARTICLE XIV
NO DISCRIMINATION

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or non-membership in a Union or based upon race, color, religion, sexual preference, gender identification, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1, should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including all gender identification.

ARTICLE XV
SAVINGS AND SEPARABILITY

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal

or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE XVI

DURATION OF THE AGREEMENT

The Project Labor Agreement shall continue in effect for the duration of the Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

[The remainder of this page intentionally left blank. Signature page to follow].

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

DULUTH BUILDING AND
CONSTRUCTION TRADES COUNCIL

To be filled out

By: _____

By: _____

Its: _____
(Printed Name/Title)

Its: _____
(Printed Name/Title)

Date: _____

Date: _____

Phone No.: _____

CITY OF DULUTH

By: _____
Mayor

Attest:

City Clerk

Date: _____

City Auditor

City Attorney

**SUBCONTRACTOR'S
AGREEMENT TO BE BOUND
PROJECT LABOR AGREEMENT**

The undersigned EMPLOYER (subcontractor) agrees that it has reviewed a copy of the Project Labor Agreement for the _____ Project located in Duluth, Minnesota, with the Duluth Building & Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

This form is to be completed by subcontractor and submitted to the Project Contractor. Project Contractor shall retain and submit to City of Duluth or Duluth Building & Construction Trades Council upon request.

Attest:

SIGNED FOR THE EMPLOYER:

Dated: _____

Signature

Company Name

Company Address

Phone No., Job Site and/or Office

Fax No.

Signer's Name

Signer's Title

SCHEDULE "A"

For a copy of the current Local Area Collective Bargaining Agreement referenced in Article II, Section 9 of the PLA please contact directly the Local Union representing the craft for the work to be performed (see attached contact list) or contact the Duluth Building & Construction Trades Council.

- A-1 Asbestos Workers Local 49
- A-2 Boilermakers Local 647
- A-3 BAC Local 1 Chapter 3 Duluth and Iron Range
- A-4 Carpenters Local 361
- A-5 Cement Masons/Plasters Local 633
- A-6 Elevator Constructors Local 9
- A-7 IBEW Local 242
- A-8 Iron Workers Local 512
- A-9 Laborers Local 1091
- A-10 Millwrights Local 1348
- A-11 Operating Engineers Local 49
- A-12 Painters & Allied Trades Local 106
- A-13 Plumbers & Fitters Local 11
- A-14 Roofers Local 96
- A-15 Sheet Metal Workers Local 10
- A-16 Sprinkler Fitters Local 669
- A-17 Teamsters Local 346

Affiliated AFL-CIO

DULUTH BUILDING AND CONSTRUCTION TRADES COUNCIL

2002 LONDON ROAD

LABOR CENTER

DULUTH, MINN. 55812



Officers

Craig Olson

President

Darrell Godbout

Vice President

Dan Olson

Secretary

Jeff Daveau

Treasurer

ASBESTOS WORKERS LOCAL 49

Dave Cartwright

2002 London Road #210

Duluth, MN 55812

(218) 724-3223 / Fax# 724-1870

dave@insulatorslocal49.org

BOILERMAKERS LOCAL 647

Bill Polchow

1007 NW 4th Street, Ste C

Grand Rapids, MN 55744

(218) 326-2522 / Fax# SAME

bpolchow647@outlook.com

BAC LOCAL #1 CHAPTER 3

DULUTH & IRON RANGE

Stan (Ogie) Paczynski

2002 London Road #100

Duluth, MN 55812

(218) 724-8374 / Fax# 724-8341

spaczynski@bac1mn-nd.org

Boilermakers #647

Bricklayers #1

Carpenters #361

CARPENTERS LOCAL 361

Chris Hill

5238 Miller Trunk Hwy

Hermantown, MN 55811

(218) 724-3297 / Fax# 724-8536

chill@ncsrcc.org

CEMENT MASONS LOCAL 633

Michael Syversrud

2002 London Road #112

Duluth, MN 55812

(218) 724-2323 / Fax# 724-2472

mikesy@local633.org

ELEVATOR CONSTRUCTORS LOCAL 9

Dave Aaserud

433 Little Canada Rd E

Little Canada, MN 55117

(651) 287-0817 / Fax# 287-0820

d.aaserud@local9.com

Ironworkers #512

Laborers #1091

IBEW LOCAL 242

Don Smith

2002 London Road #111

Duluth, MN 55812

(218) 728-6895 / Fax# 728-1965

dsmithlc242@unions-america.com

IRON WORKERS LOCAL 512

Darrell Godbout, *Vice President*

3752 Midway Road

Hermantown, MN 55810

(218) 724-5073 / Fax# 724-1525

darrell@iron512.com

LABORERS LOCAL 1091

Dan Olson, *Secretary*

2002 London Road #119

Duluth, MN 55812

(218) 728-5151 / Fax# 728-2431

laborers@local1091.com

Painters #106

MILLRIGHTS & MACHINERY ERECTORS LOCAL 1348

Wayne Nordin

726 4th Street N

Virginia, MN 55792

(218) 741-6314 / Fax# 741-6017

wnordin@ncsrcc.org

OPERATING ENGINEERS LOCAL 49

Eric Gulland & Mike Parrott

2002 London Road #116

Duluth, MN 55812

(218) 724-3840 / Fax# 728-1441

egulland@local49.org

mwparrott@local49.org

PAINTERS LOCAL 106

Craig Olson, *President*

2002 London Road #106

Duluth, MN 55812

(218) 724-6466 / Fax# 724-7359

president@duluthbuildingtrades.com

Roofers #96

Sheetmetal #10

Sprinklerfitters #669

Teamsters #346

PLUMBERS & FITTERS LOCAL 11

Jeff Daveau, *Treasurer*

4402 Airpark Boulevard

Duluth, MN 55811

(218) 727-2199 / Fax# 727-2298

jeff@ualocal11.com

ROOFERS LOCAL 96

Vance Anderson

1145 Villa Vista Circle

Cromwell MN 55726

(218) 644-1096 / Fax# SAME

valocal96@yahoo.com

SHEET METAL WORKERS LOCAL 10

Doug Christy

6279 Industrial Road

Saginaw, MN 55779

(218) 724-6873 / Fax# SAME

dchristy@smw10.org

SPRINKLER FITTERS LOCAL 669

James Westby

PO Box 398

Mabel, MN 55954

(507) 493-5671 / Fax# 493-5481

westby@mabeltel.coop

TEAMSTERS LOCAL 346

Rod Aistead

2802 West 1st Street

Duluth, MN 55806

(218) 628-1034 / Fax# 628-0246

local@teamsters346.com

Exhibit E
Certificate of Completion

RECITALS:

On _____, 20__, One Roof Community Housing, a 501(c)(3) non-profit corporation, created and existing under Minnesota Statute (1989), Chapter 317A (“Developer”), and the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statute (1989) Chapter 469, (“DEDA”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on _____, 20__, as Document No. _____ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

Paragraph D of Article VI of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

NOW, THEREFORE:

Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

The Registrar of Titles or County Recorder in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.

[The remainder of this page intentionally left blank. Signature page to follow].

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

Notary Public

By _____
Jeff Corey, Executive Director
of One Roof Community Housing,
Its Sole Member

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Jeff Corey, the Executive Director of One Roof Community Housing, a Minnesota non-profit corporation, the Sole Member of Plover Place, LLC, a limited liability company under the laws of the State of Minnesota on behalf of said limited liability company.

Notary Public

Exhibit F
PLOVER PLACE
CONSTRUCTION DISBURSING AGREEMENT

Arrowhead Abstract & Title Co. File No. _____

Project Name: Plover Place, LLC

Property Address: _[TBD]_ W. Palm Street, Duluth, MN 55811

Brief Description of Improvements: Two Modular Buildings w/Site Improvements

Legal Description:

LOTS 20 THRU 22, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION and
LOTS 23 THRU 28, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION and
ALL OF LOT 29 AND LOT 30 EX WLY 33FT, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION
and
WLY 33 FT OF LOT 30, BLOCK 006, DULUTH HEIGHTS 5TH DIVISION
St. Louis County, Minnesota.
PID: 010-0880-01850, 010-0880-01845, 010-0880-01780 and 010-0880-01750

THIS CONSTRUCTION DISBURSING AGREEMENT ("Agreement") is made and entered into as of _____, 2022 by and among Arrowhead Abstract & Title Co. ("Disbursing Agent"), and Plover Place, LLC, by and through One Roof Community Housing, its Sole Member (collectively "Plover").

RECITALS:

Plover has entered into a Construction Contract between Owner and Contractor Ideal Homes of Barnum, Inc. in the amount of _____ Dollars (\$_____) for purposes of placing Two Modular Buildings with site improvements to the property referenced above ("Construction Contract").

Plover agrees that Disbursing Agent will disburse the advances made through City of Duluth and St. Louis County "ARPA" and Disbursing Agent is willing to do so on the terms and subject to the conditions hereinafter.

NOW, THEREFORE, in consideration of the covenants set forth in this agreement and other good and valuable consideration, the receipt and the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals are incorporated herein by reference.

2. Definition of Terms. The following terms shall have the following meanings:

- a. "Architect" means Greg Strom of Foundations Architecture pursuant to an agreement between Greg Strom and Plover.
- b. "Change Order" means a change to the Cost of Construction and Soft Cost, Construction Contract or any other construction document in connection with the construction of the Project that result in an increase or decrease in the Cost of Construction and Soft Cost reflected in the Sworn Construction Statement.
- c. "Construction Contract" means that certain agreement by and between Plover and Contractor dated _____.
- d. "Contractor" means Ideal Homes of Barnum, Inc.
- e. "Cost of Construction" means all costs for labor and/or materials related to the Project.
- f. "Funds" undisbursed proceeds in the amounts to be determined by Plover and Contractor.
- g. "Lien Waiver/Waiver" means the waiver of rights to a lien in the form attached hereto and incorporated herein as **Exhibit A**.
- h. "Payment Request" shall mean a certified application for payment executed by Plover, Contractor and Inspecting Architect in the form attached hereto (AIA Form G702) and incorporated herein as **Exhibit B**, requesting payments pursuant to the Construction Contract and this Agreement.
- i. "Project" means 2 Modular Homes and Site Improvements as set forth under the Construction Contract.
- j. "Project Budget" means the Costs of Construction of the Project, together with all Soft Costs.
- k. "Soft Costs" means those costs for the construction of the Project, which are not directly related to completion of the Project; i.e., costs that do not include costs for labor or materials. Examples of Soft Costs include, but are not limited to, land acquisition costs, interest and legal and title fees.
- l. "Subcontractor" means a person or business which has a contract with the Contractor or Plover, or another Subcontractor, to provide some portion of the work, services or materials related to the Project.

- m. “Sworn Construction Statement” means a statement executed by both Plover and Contractor disclosing all contracts entered into by Plover and Contractor related to the Project. This statement must set forth, in detail, the name, addresses and telephone numbers of all contractors with whom either Plover or Contractor has contracted, the type of labor and materials to be furnished, amounts of the contracts (including extras and credits), amounts previously paid, accumulative retainages to date, and balances due.
3. Deposits with Disbursing Agent. From time to time at the request of Plover, and upon compliance by Plover with all of the City of Duluth and St. Louis County Agreements, Plover will cause to be deposited Funds with the Disbursing Agent. Upon receipt of the Funds, Disbursing Agent shall deposit the Funds into a non-interest earning escrow account with a national banking association or other federally insured banking institution with which Disbursing Agent has established a banking relationship. To the extent Funds are advanced in excess of the amount required for immediate disbursement, said funds shall be held in escrow and disbursed according to the terms of this Agreement.
4. Responsibility of Disbursing Agent. Subject to the terms of this Agreement, Disbursing Agent is authorized and directed to:
- a. Not more than once per month, pay Cost of Construction and Soft Costs incurred in connection with the construction of the Project, pursuant to the terms of this Agreement.
 - b. Obtain Lien Waivers, releases and satisfactions of liens and other encumbrances, if any, pursuant to statements of amounts due which must be approved by Plover.
 - c. Within 7 (not less than 5) business days following receipt of the documents delivered to it pursuant to Section 6, Disbursing Agent will notify Plover orally or in writing:
 - i. Whether the delivered documents are satisfactory to it; and
 - ii. Whether Disbursing Agent has received Lien Waivers from the Contractor and all Subcontractors who should have been paid by it from the proceeds of the disbursement made in response to the previous Payment Request.
 - iii. If waivers are missing or insufficient, Disbursing Agent will promptly advise Plover, in reasonable detail, of the deficiency or missing lien waivers, as the case may be.
 - d. Upon receiving the funds from the City of Duluth and/or St. Louis County on behalf Plover, and upon compliance by the various parties with the Conditions for Disbursement set forth in Section 6. below, Disbursing Agent will pay the Contractor, each Subcontractor, and all other persons identified in the relevant Payment Request. If any Funds on deposit in Disbursing Agent's account are not

disbursed by Disbursing Agent by the close of business on the fifth (5th) business day following credit of funds to its account, Disbursing Agent will forthwith remit to Plover, in immediately available funds, the amount of the funds in such account that were not disbursed. Disbursing Agent shall not be liable to the City of Duluth, St. Louis County or Plover for interest on the funds deposited with it.

- e. Disbursing Agent will keep and maintain, at all times, full, true and accurate books and records, in sufficient detail to reflect the disbursements made by it hereunder. Plover may, during normal business hours, examine all books and records of Disbursing Agent pertaining to the disbursements made by it hereunder and make extracts therefrom and copies thereof.
 - f. One premise is that the funds being disbursed by the City of Duluth and St. Louis County, each providing One Million Six Hundred Thousand Dollars (\$1,600,000), are to be distributed equally. However, the County has agreed to advance the deposit for the modular buildings and will disburse those funds first and thereafter, to the extent of the County's lodging and building disbursement, fifty percent (50%) will be disbursed from each.
5. Responsibility of Plover. Subject to the terms of this Agreement, Plover shall:
- a. Review all documents supporting a Payment Request.
 - b. Verify that the labor and materials represented on the Contractor's Payment Request have been incorporated into the Project.
 - c. Provide notice to Disbursing Agent of any and all approved or pending Change Orders.
 - d. Provide sufficient documentation to support a Payment Request of Soft Costs.
 - e. Advance any such additional Plover's Equity as may be required to assure that the remaining available Construction Loan proceeds are sufficient to pay all remaining Cost of Construction and Soft Cost.
6. Conditions for Disbursement.
- a. First Disbursement of Funds. Prior to the first disbursement of Funds hereunder, Disbursing Agent shall be furnished:
 - i. A copy of the construction budget or use of proceeds schedule executed by Plover setting forth the amounts budgeted for all items which in the aggregate constitute Project Budget.
 - ii. An up-to-date Sworn Construction Statement prepared by the Contractor and co-signed by Plover.

- iii. Copies of the Construction Contract, and any other documents required by Disbursing Agent in its discretion.
 - iv. The Payment Request executed by Plover and the Contractor in connection with the requested disbursement.
 - v. Sign off by the Architect that work has been completed and materials are in place as indicated by the Payment Request.
 - vi. Sufficient funds to cover the requested disbursements and to pay for extras or Change Orders for which waivers have not been deposited and for which funds have not previously been deposited.
 - vii. Sufficient funds to cover unpaid charges owed under this Agreement.
 - viii. Resolution satisfactory to Disbursing Agent of any outstanding title issues, including but not limited to, mechanic's liens or judgment liens served or filed of record.
 - ix. As noted in Section 4, the initial disbursement will be from St. Louis County funds and thereafter a process will be put in place to equalize amounts funded by City and County.
- b. Conditions of Subsequent Disbursement of Funds. Prior to each disbursement of Funds hereunder, Disbursing Agent shall be furnished:
- i. An up-to-date Project Budget prepared by Plover.
 - ii. An up-to-date Sworn Construction Statement prepared by the Contractor and co-signed by Plover, amounts paid to date, the amounts being requested and the balance due.
 - iii. The Payment Request executed by Plover and the Contractor in connection with the requested disbursement.
 - iv. A report of the Architect certifying that work has been completed and materials are in place as indicated by the Payment Request, if required by the City of Duluth or St. Louis County.
 - v. Sufficient funds to cover the requested disbursements and to pay for extras or Change Orders for which waivers have not been deposited and for which Funds have not previously been deposited.
 - vi. Sufficient funds to cover unpaid charges owed under this Agreement.

- vii. Lien Waivers, satisfactory to Disbursing Agent, with respect to amounts disbursed pursuant to the immediately preceding Payment Request.
- viii. Copies of all pending or approved Change Orders.
- ix. Resolution satisfactory to Disbursing Agent of any outstanding title issues, including but not limited to, mechanic's liens or judgment liens served or filed of record.

c. Conditions of Final Disbursement of Funds.

- i. An up-to-date Project Budget prepared by Plover.
- ii. An up-to-date Sworn Construction Statement prepared by the Contractor and co-signed by Plover, amounts paid to date, the amounts being requested and the balance due.
- iii. The Payment Request executed by Plover and the Contractor in connection with the requested disbursement.
- iv. Sufficient funds to cover the requested disbursements, and to pay for extras or Change Orders for which waivers have not been deposited and for which Funds have not previously been deposited.
- v. Sufficient funds to cover unpaid charges owed under this Agreement.
- vi. Lien Waivers, satisfactory to Disbursing Agent, with respect to amounts disbursed pursuant to the immediately preceding Payment Request.
- vii. Conditional Final Lien Waivers from all Contractors or Subcontractors confirming the amount to be paid pursuant to the Payment Request.
- viii. Copies of all pending or approved Change Orders.
- ix. Resolution satisfactory to Disbursing Agent of any outstanding title issues, including but not limited to, mechanic's liens or judgment liens served or filed of record.
- x. Evidence, satisfactory to Disbursing Agent, that the Project has been completed.

7. Advances to Disbursing Agent. At such time as all Conditions for Disbursement set forth in Section 6 above have been met, Plover will (on the requested date of disbursement) cause to be transmitted to Disbursing Agent the amount of the disbursement applied for the relevant Payment Request, by transfer of such funds to Disbursing Agent for deposit in Disbursing Agent's Account No. _____ maintained with _____ **Bank.**

8. Disbursements to Subcontractors. All disbursements for Cost of Construction may be made to the Contractor (who it is expected will thereafter promptly pay subcontractors for the work or amounts listed in the draw request) or may be made directly to the Subcontractors, in the discretion of Plover and/or Disbursing Agent.
9. Project Balance. If at any time during the course of construction, the total of the unpaid disclosed Cost of Construction and Soft Cost as indicated by the column totals on the Sworn Statement exceeds the amount of the undisbursed Funds, Disbursing Agent shall not make further disbursements under the terms of this Agreement until Plover has deposited with Disbursing Agent the sum necessary to make the available funds equal to the unpaid disclosed Cost of Construction and Soft Cost.
10. Liability of Disbursing Agent. The functions and duties assumed by Disbursing Agent include only those described in the Agreement, and Disbursing Agent is not obligated to act except in accordance with the terms and conditions of this Agreement. Disbursing Agent does not insure that the Project will be completed, nor does it insure that the Project when completed will be in accordance with any plans or specifications, nor that sufficient funds will be available for the completion, nor does it make the certification of the Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement. Disbursing Agent has no liability for loss caused by an error in the certification furnished it hereunder as to work in place. Disbursing Agent shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds which are deposited in the United States mail shall not be construed as being in the custody of Disbursing Agent. Disbursing Agent is not responsible for loss due to false affidavits of contractors and subcontractors. If Disbursing Agent discovers a misstatement in an affidavit furnished by the Contractor or Plover, it shall stop disbursement until the misstatement has been corrected to Disbursing Agent's satisfaction.
11. Indemnification of Disbursing Agent. Except for Disbursing Agent's negligence or willful misconduct in the performance of its duties under this Agreement, Plover agrees to indemnify Disbursing Agent against all losses, claims, damages, liability, and expenses, including, without limitation, costs of investigation and legal counsel fees which may be imposed on Disbursing Agent or incurred by Disbursing Agent in connection with the performance of its duties under this Agreement, including, without limitation, any litigation arising from this Agreement or involving the subject matter of this Agreement.
12. Fees. Plover shall pay all charges due under this Agreement, including search update fees. Plover shall pay to Disbursing Agent an administrative fee of \$_____ (or more in the event of a non-routine draw, which may be considered non-routine because of unresolved liens, insufficient project or lien waiver documentation, disputes between parties, etc.) per disbursement.

13. No IRS-1099 Reporting by Disbursing Agent. The parties acknowledge that the Disbursing Agent shall not be responsible for creating, furnishing or reporting any IRS 1099 notices or filings for any payments disbursed under this Agreement for the parties.
14. Rights of Inspection Disbursing Agent, through its agents, employees and any independent contractor employed by it, shall have the right, at any time, and from time to time, to go upon the Project for the purpose of exercising any of the rights and duties conferred upon the Disbursing Agent under the provisions of this Agreement.
15. No Third Party Beneficiaries. This Agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions, remedies to any person, or entity other than Plover and Disbursing Agent.
16. Miscellaneous.
 - a. Assignment/Enforcement. This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that Disbursing Agent may not assign its duties hereunder without the prior written consent of Plover.
 - b. Amendment. This Agreement can be amended or modified only by a writing signed by the parties hereto.
 - c. Jurisdiction. This Agreement shall be governed by the laws of the State of Minnesota.
 - d. Counterpart. This Agreement may be executed in multiple original counterparts, duly executed by Disbursing Agent and Plover, provided, however, this Agreement shall not become binding upon Disbursing Agent until it has received manually executed original copies of the same from each of the foregoing named parties and Disbursing Agent has accepted the same and delivered copies of said executed Agreement to each of said parties.
 - e. Terms. If there be more than one person designated herein, the verbs and pronouns associated therewith, although expressed in the singular, shall be read and construed as plural.
 - f. Severability. In the even that any provision of this Agreement, of part thereof, shall be held to be void or unenforceable by a final, non-appealable order entered by a court of competent jurisdiction, such determination shall not affect or impair the enforceability of the remaining portions of this Agreement.
 - g. Authority. Each party hereto represents and warrants to the other parties hereto that it has full power and authority to execute this Agreement and to perform or cause to be performed the obligations on its part to be performed.

- h. Computation of Time. In the computation of a period of time, if any, expressed in this Agreement, the day of the act or event from which said period of time runs shall be excluded and the last day of such period shall be included, unless it falls on a Saturday, Sunday, or legal holiday observed by the recording office of the county in which the Project is located, in which case the period shall be deemed to run until the end of the next day, which is not a Saturday, Sunday, or such legal holiday.
- i. Captions. The captions contained in this Agreement are for convenience only and are not part of the terms, provisions, or conditions of this Agreement.
- j. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes any prior or contemporaneous agreements, representations, or understandings, whether written or oral.

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

DISBURING AGENT:
ARROWHEAD ABSTRACT AND TITLE CO.

By: _____
Name (print): _____
Its: _____

PLOVER PLACE, LLC and
ONE ROOF COMMUNITY HOUSING, its
Sole Member

By: _____
Name (print): _____
Its: _____

ACKNOWLEDGEMENT OF CONTRACTOR

_____, as _____ of Ideal Homes of Barnum, Inc., a Minnesota corporation, the Contractor identified herein, hereby acknowledges receipt a copy of the foregoing Construction Disbursing Agreement, which sets forth the documentation required by Disbursing Agent for each Payment Request.

Dated: _____, 2022

By: _____
Its: _____

