

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**AGREEMENT FOR THE EXECUTION OF A
HOME INVESTMENT PARTNERSHIPS PROGRAM**

This Agreement, made and entered into this ____ day of _____ 2015, by and between the City of Durham, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter "City"), and Whitted School Redevelopment, LLC a Georgia limited liability company, (hereinafter "Borrower").

WITNESSETH:

WHEREAS, the City has entered into an Agreement for a HOME Investment Partnerships Program (hereinafter "Funding Agreement") with the U. S. Department of Housing and Urban Development (hereinafter "HUD"); and

WHEREAS, it is the purpose of this agreement to effect a specified portion of the program approved by the Funding Agreement in accordance with the policies expressed by and declared in Title II of the National Affordable Housing Act of 1990, as amended (hereinafter "Act"); and

WHEREAS, pursuant to said purpose the Borrower is undertaking certain activities and desires to engage the City to render certain assistance in such undertakings.

NOW, THEREFORE, for valuable consideration and mutual promises exchanged between the parties hereto, it is agreed as follows:

A. SCOPE OF SERVICES:

1. The activities to be performed pursuant to this Agreement shall be those specified in Attachment A to the Loan Agreement between the parties of even date herewith, which is incorporated by reference herein as if fully set forth and under the Project Title:

**The Veranda at Whitted School
200 East Umstead Street**

B. DURATION OF AGREEMENT:

This Agreement shall be effective as of the date of this agreement first written above and shall remain in effect during the period of affordability required by the Act under 24 CFR Part 92.252 or 92.254.

C. TERMS AND CONDITIONS:

1. The Borrower shall enforce this agreement through a promissory note, deed of trust and declaration of deed restrictions on all real properties receiving an investment of HOME funds which shall require compliance with all applicable HOME Program requirements. This Agreement shall be considered breached if the Borrower materially fails to comply with any term in this Agreement. Such breach shall result in the termination of this Agreement and the recapture of all HOME funds disbursed to the Borrower.
2. The Borrower shall assume responsibility for managing the day-to-day operations of its HOME program, to assure compliance with program requirements outlined in 24 CFR Part 92, and for taking appropriate action when performance problems arise.
3. The Borrower shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR 92.252 or 92.254 as applicable, and shall repay its award of HOME funds in

full to the City if the housing does not meet the affordability requirements for the specified time period.

4. The Borrower shall retain all repayment, interest, and other return on the investment of HOME funds in a separate local account for use to fund additional eligible HOME activities of the Borrower's choosing and agrees to invest all returns on HOME investments in additional eligible activities before drawing down additional HOME funds from the City.
5. The Borrower shall request disbursement of HOME funds no more often than monthly during the construction phase.
6. The Borrower shall submit a complete monthly activity report to the City no later than 10 days after closure of the previous month until all units are occupied by an Eligible Tenant. Thereafter, CHDO shall submit a project status report by January 1st of each year.
7. The Borrower shall require all owners of housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.
8. The Borrower shall, where applicable, review the activities of owners of rental housing assisted with HOME funds to assure compliance with the requirements set out in 24 CFR Part 92 not less than annually. Each review must include an annual on-site inspection to determine compliance with housing codes and the HOME Program requirements. These inspections shall be conducted for each unit in a project during the project's period of affordability.
9. The City shall hold the Borrower responsible for complying with the provisions of this agreement even when the Borrower designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as required in this agreement.
10. None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall benefit from activities assisted under this agreement or have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this agreement: employees, agents, or officials of the Borrower or the City, including members of the governing body, who exercise any function or responsibility with respect to the program. The same prohibition shall be incorporated in all such contracts and subcontracts.
11. The assistance provided under this agreement shall not be used by the Borrower to pay a third party to lobby the United States government for funding approval, approval of applications for additional assistance, or any other approval or concurrence of HUD required under this agreement. However, HOME funds may be used to pay reasonable fees for services that are eligible as a program cost.
12. The Borrower shall reimburse the City for any amount of HOME funds determined by the City or HUD to have been improperly expended, and the City shall retain the right to recover any questioned costs or overpayments from the Borrower.
13. Upon termination, the Borrower shall remit any unexpended balance of advanced payments on account of the Loan as well as such other portions of such payments previously received as determined by the City to be due and the action of the City in accepting any such amount shall not constitute a waiver of any claim which the City may otherwise have.

14. The Borrower shall allow the City to carry out monitoring and evaluation activities as determined necessary by the City and HUD.
15. In the event of termination, all property and finished or unfinished documents, data, studies, and reports purchased or prepared by the Borrower under this Agreement shall, at the option of the City, become the property of the City.

D. FUNDING AND PAYMENT:

1. The Borrower shall certify that all matching requirements of 24 CFR 92.218-222, as applicable, will be adhered to, and that non-federal funds in the sum of not less than **Six Hundred Thousand and No/100 Dollars (\$600,000)** shall be expended in Project Costs as outlined in Attachment A.

E. BUDGET CHANGES AND UNREIMBURSABLE EXPENSES:

1. Except for changes made in accordance with subsection (2) below, any and all alterations in the approved use of budgeted funds shall be subject to prior review by the City.
2. Funds may be shifted between line items of the Project without prior approval of the City only to the extent that such action does not result in a change in the Project and so long as it does not exceed ten percent (10%) of the line item total from which the funds are being removed or to which the funds are being added, as it relates to the City's Loan Agreement.
3. A report of funds shift not requiring prior approval by the City shall be provided in writing to the City Director of Housing and Community Development within three (3) working days after its effective date, as it relates to the City's Loan Agreement and any other funding sources.
4. Any costs and expenses not covered by the attached Project Budget, and hence not properly payable from Grant funds, shall be borne entirely by the Borrower.

F. RECORDS AND REPORTS:

1. The Borrower shall maintain and shall make available at reasonable times and places to the City such records and accounts, including property, personnel, and financial records, as are deemed necessary by the City and/or State and federal agencies in order to assure a proper accounting for all Project funds.
2. The Borrower shall provide any duly authorized City representative, representative of HUD and the Comptroller General of the United States, at all reasonable times during normal business hours, access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the HOME funds and the fulfillment of this agreement for a period of five years following the completion of all close-out procedures respecting HOME funds, and the final settlement and conclusion of all issues arising out of the HOME loan.
3. The Borrower shall provide a monthly report to the City which notes accomplishments, beneficiaries, problems encountered and changes in work schedule and any other information needed by the City to complete the Annual Performance Report and other reports required by HUD, until such time as project is complete and all of the units are occupied. This monthly report shall also include an accounting of all program income received and/or expended during the month and year to date.
4. The Borrower shall provide an Annual Audit Report performed in compliance with Office of Management and Budget Circular A-133.

G. FINANCIAL ACCOUNTING:

1. The Borrower shall establish and maintain fiscal and accounting records in accordance with generally accepted accounting principles and practices.
2. The Borrower shall not commingle accounts to an extent that prevents the accounting and auditing of the funds provided hereunder: Provided, however, the Borrower may supplement the funds provided hereunder from other fund sources.
3. Funds provided hereunder are exclusively for the purposes of this Agreement under the terms and conditions of the Agreement, and the Borrower shall not temporarily or permanently shift such funds to other programs or for other purposes for any reason.

H. INSURANCE AND LIABILITY:

The Borrower's chief fiscal officer or insurer shall provide the City with a Statement assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount consistent with sound fiscal practice and with the coverage deemed necessary by the City for its own employees.

Work to be performed as provided herein shall be done by the Borrower as an Independent Contractor. The City shall not be liable for claims for damages or losses arising out of the performance of this Agreement by the Borrower, its employees, officers or agents and the Borrower shall indemnify and hold harmless the City, its officers, agents and employees from all such claims arising under this agreement.

I. RESIDENT ECONOMIC OPPORTUNITY:

1. The Borrower shall take affirmative action to ensure that residents of the project area are given maximum opportunity for training, employment and business opportunities.
2. When qualified applicants are available, preference shall be given to residents of the project area in filling all training, business opportunities and jobs generated by the Program even where employment results outside the geographic boundary of the project area.

J. PUBLICITY:

The Borrower shall make every effort in its publicity and in other ways, to fully inform the public concerning the Project. Any publicity given to the Project must recognize the City of Durham as a sponsor and the Project being funded by the City through the HOME Investment Partnerships Program. The City will, in all publicity originated by it concerning the Project, recognize the Borrower as the entity responsible for carrying out the Project.

K. SUSPENSION OR TERMINATION FOR CAUSE:

1. The City, upon written notice to the Borrower, may suspend or terminate payment of HOME funds to the Borrower in whole or in part for cause which shall include the following:
 - a. Ineffective or improper use of HOME funds;
 - b. Failure to comply with the terms and conditions of this Agreement;
 - c. Submission to the City of reports which are knowingly incorrect or incomplete in any material respect;
 - d. Suspension of the HOME funds from HUD to the City in whole or part for any reason.
 - e. Termination due to Adverse Environmental Impact. This Agreement is conditioned on the City's determination to proceed with, modify or

cancel the project based on the results of a subsequent environmental review. This Agreement will terminate at the conclusion of the environmental review process if the results of the review indicate that the project would have a significant adverse impact on the environment and that this impact cannot be feasibly eliminated or mitigated.

2. The City, upon written notice to the Borrower, may also withhold payment of any unearned portion of the Loan if the Borrower is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations or by other policy announced by HUD.
3. If the City withholds payment, it shall advise the Borrower in writing what action must be taken as a condition precedent to the resumption of payments.

L. ASSIGNABILITY:

This agreement is expressly non-assignable without the prior written consent and approval of the City; nor may the Project be continued by a successor to the Borrower herein named without the prior written consent of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement.

M. DOCUMENTS OF INCORPORATION:

This Agreement is expressly made subject to all Attachments hereto, to all of the attachments, provisions, requirements, federal, state and local laws, rules and regulations as of the ___ day of _____, 2015, between the City of Durham, Whitted School Redevelopment, LLC and the Funding Agreement between the City and HUD and to any and all requirements, whether federal, state or local, verbal or written, placed upon the City. All of the foregoing are hereby made a part of this Agreement and incorporated herein by reference.

N. MISCELLANEOUS PROVISIONS:

1. The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine, and vice versa.
2. A signed copy of this Agreement shall be considered as an original.
3. Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

CITY OF DURHAM
Director, Department of Community Development
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
(919) 560-4570 (919) 560-4090 fax

WHITTED SCHOOL REDEVELOPMENT, LLC
191 Peachtree Street NE
Suite 4100
Atlanta, Georgia 30303
(404) 224-1860 ph. (404) 224-1898 fax

IN WITNESS WHEREOF, the City of Durham and Whitted School Redevelopment, LLC have caused this Agreement to be duly executed all as of the day and year first above written.

CITY OF DURHAM

By _____
Thomas J. Bonfield, City Manager

ATTEST:

CITY OF DURHAM

City Clerk

Whitted School Redevelopment, LLC
a Georgia limited liability company

By _____
Managing Member

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, Notary Public of the County and State aforesaid certify that _____ personally came before me this day and acknowledged that he/she is the City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager, whose name is Thomas J. Bonfield, and attested by him/herself as its City Clerk.

Witness my hand and notarial seal this _____ day of _____, 2015.

Notary Public

My Commission Expires

GEORGIA
COUNTY OF

ACKNOWLEDGMENT BY
LIMITED LIABILITY COMPANY

I, a Notary Public in and for said county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of the Whitted School Redevelopment, LLC, a limited liability company organized under the laws of the State of Georgia, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 2015.

Notary Public

My Commission Expires

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the _____ day of _____, 2015.

Finance Officer