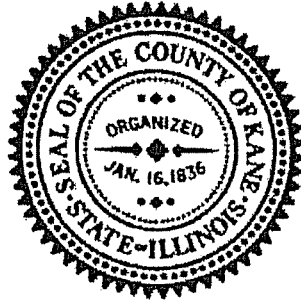


County of Kane  
Office of County Board  
Kane County Government Center

Karen McConnaughay  
Chairman  
630-232-5930



719 Batavia Avenue  
Geneva, Illinois 60134  
Fax 630-232-9188

**DOCUMENT VET SHEET**

for  
Karen McConnaughay  
Chairman, Kane County Board

Name of Document: HOME Loan Agreement between Kane County & Elgin  
Artspace Lofts LP

Submitted By: Josh Beck, Office of Community Reinvestment, 444-2960

Date Submitted: July 26, 2011

Examined by:

KC SIMMONS  
(Print name)

[Signature]  
(Signature)

8-8-2011  
(Date)

Post on Web:

Yes

No

Atty. Initials

KC

Comments: Enclosed please find the HOME Program Loan Agreement for the Elgin Artspace Lofts Project in the City of Elgin for Chairman McConnaughay's review & signature. The agreement stipulates the terms and conditions under which the county will provide HOME Investment Partnership Program funds to Elgin Artspace Lofts for the development of 55 units of affordable/workforce housing in downtown Elgin.

Chairman signed: Yes No

\_\_\_\_\_  
(Date)

Document returned to: \_\_\_\_\_

**HOME PROGRAM LOAN AGREEMENT**  
**BETWEEN**  
**KANE COUNTY, ILLINOIS**  
**AND**  
**ELGIN ARTSPACE LOFTS LIMITED PARTNERSHIP**

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**THIS AGREEMENT, August 31, 2011**, by and between Kane County, Illinois (herein called the "County"), and Elgin Artspace Lofts Limited Partnership (herein called the "Borrower").

**WHEREAS**, the County, as the lead entity of the Kane-Elgin HOME Consortium (herein called the "Consortium"), has received an award of Federal funds under the HOME Investment Partnerships Program (herein called "HOME Program"), pursuant to the National Affordable Housing Act of 1990 (PL-101-605), as amended, and Title XIII of the Omnibus Reconciliation Act of 1993 (26 U.S.C. 1391, et seq.); and

**WHEREAS**, the Catalog of Federal Domestic Assistance (CFDA) Number for said funds is 14-239 and they are administered by the U. S. Department of Housing and Urban Development (herein referred to as "HUD"); and

**WHEREAS**, the Consortium wishes to distribute a portion of said funds to the Borrower to serve as gap financing for the development of affordable rental housing within the Consortium Area.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained herein, the parties hereto agree as follows:

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**I. Scope of Project**

A. Borrower hereby agrees to perform, in a timely fashion, the activity described herein Section II and as previously defined in its application dated August 12, 2010, and accompanying materials. HOME funds provided herein will be used for eligible costs associated with the acquisition, rehabilitation, and new construction of a 55 unit multi-family development, located at 51 South Spring Street Elgin, Illinois 60120. Ten of the Fifty-Five units will be considered fixed HOME assisted units under this agreement and used to provide affordable rental housing for income-eligible families (hereinafter called "Project").

B. Borrower agrees to administer the Project in accordance with the HOME regulations at 24 CFR 92 and other applicable federal, state, and local laws, ordinances and regulations. The scope of activities to be performed, pursuant to this Agreement, will be governed by, and limited to, the following:

1. Borrower may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to eligible costs as determined by the County.

2. County shall provide HOME funds to Borrower to reimburse Borrower for eligible costs that the County determines to be customary, reasonable, and associated with the acquisition, rehabilitation, and new construction of 55 unit multi-family development located at 51 South Spring Street; Elgin, Illinois 60120 (hereinafter called "Property").

3. Prior to advertising for occupancy of the Project, Borrower shall submit an Affirmative Marketing Plan and a Tenant Selection Plan, in a form acceptable to County, describing methods used to market to prospective tenants and the criteria to be used to select tenants.

4. Borrower shall, execute a Mortgage in the amount of \$750,000.00, in a form acceptable to County, secured by a Promissory Note payable to County for the Property. This mortgage instrument shall be in compliance with this Agreement and contain the following provisions and conditions including, with respect to the following provisions and conditions, notice and opportunity to refute or to cure provisions that are comparable to the provisions that are set forth in Section IX.C of this Agreement:

"In the event that any one or more of the stated conditions occur, the mortgage financed in part or total with HOME funds shall be considered in default. Said conditions which shall immediately precipitate and cause said mortgage to be in default are as follows.

a. That Borrower fails to design the Property as affordable rental housing according to the terms and conditions of the Act.

b. That Borrower files any petition in bankruptcy, or for a receiver, or insolvency, or for reorganization of composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy, the taking of possession of the Property or any part thereof by the receiver, or the seizure and sale of the Property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse action set aside within Sixty (60) days.

c. That Borrower transfers, or otherwise encumbers the Property, without the prior express written consent of the County.

d. That Borrower fails to maintain the Property and its grounds and equipment pertinent thereto according to local codes and ordinances.

e. That Borrower shall fail to purchase fire and extended coverage insurance and flood insurance thereon and provide and file a certificate of said coverage with the County, the proceeds of which, in the event said structure shall be destroyed or damaged by fire or other casualty, shall be used for reconstruction of said structure upon the said real estate."

5. Ten (10) of the fifty-five (55) housing units created pursuant to the Project shall be HOME assisted. Out of the Ten (10) HOME-assisted units, at least two (2) shall be rented to a very low income household at 50% or less of median family income in accordance with the requirements of the HOME Program. The remaining eight (8) units shall be rented initially to households at 60% or less of median family income, and subsequently to households at 80% or less of median family income, in accordance with the requirements of the HOME Program. Borrower is aware they will have to income-qualify any new prospective tenants before they may reside in the home.

6. All ten (10) HOME-assisted units created pursuant to the Project shall comply with the current Maximum Allowable Rents for HOME projects established by HUD and effective on the date of this agreement. At least two (2) of the units shall be rented at or below the maximum Low HOME rent including utilities, and the remaining eight (8) units shall be rented at or below the maximum High HOME rent including utilities.

2011 HOME Rent Limits					
Chicago-Naperville-Joliet Illinois HUD Metro Area					
Effective 06-28-2011					
	Efficiency	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Low Home Rent	\$660.00	\$706.00	\$848.00	\$980.00	\$1,093.00
High Home Rent	\$790.00	\$896.00	\$1,016.00	\$1,235.00	\$1,364.00

When utilities are not included in the rent, said maximum rents shall be reduced by an amount equal to the applicable utility allowances in effect for the Housing Authority of Elgin. In the event that HUD publishes a new Maximum Allowable Rents Schedule for High and Low HOME rents after the date of this agreement, the Borrower is allowed to increase rents to comply with the new rent limits when a tenant's lease is to be renewed, provided the new limits are greater than those stated herein.

7. County and Borrower agree that the Ten (10) units created will be fixed HOME units in accordance with HUD Regulations, 24 CFR Part 92.252 (j). Fixed HOME units remain the same throughout the period of affordability.

8. The Project shall remain affordable in accordance with 24 CFR Part 252 and paragraphs I-B-5 and 6 above for 20 years (hereinafter called the "Affordability Period"), beginning when the following events have occurred:

- a. all necessary title transfer requirements and construction work has been completed;
- b. the project complies with the requirements of 24 CFR 92.251;
- c. the final draw down has been disbursed for the project;
- d. the Borrower has submitted its Certification of Lease Occupancy; and
- e. the project completion information has been entered in the Integrated Disbursement and Information System (IDIS) established by HUD, in accordance with 24 CFR Part 92.2.

In addition to, and beginning at the completion of, the Affordability Period, the Project shall remain affordable in accordance with 24 CFR Part 252 and paragraphs I-B-5 and 6 above for an additional ten (10) years (hereinafter called the "Extended Affordability Period"). The Extended Affordability Period shall be required to meet the affordable housing goals of the County.

9. County and Borrower agree that the Affordability Period and the Extended Affordability Period will remain in effect for a total of 30 years and that all obligations for said Affordability Period and Extended Affordability Period shall be secured by deed restrictions and covenants running with the land as described in Section III D of this Agreement.

C. Borrower shall provide copies of all items required in Section II-B for County approval prior to the County's release of HOME funds. Any changes must be submitted to the County in writing, and approved by the County, prior to release of HOME funds.

D. Borrower shall provide a Progress Report to the County by the Twentieth day of each month covering the activities of the previous month, reporting on the status of the project in relation to the completion dates referred to in Section XI. The progress reports shall begin one month following the signing of this Agreement and shall continue until the Project is closed out.

E. Borrower shall keep a file on each renter containing information as required by the HOME program, and by the County as administrator of the HOME program.

F. At the request of the County, the Borrower shall furnish such reports, budgets, certifications and other documents required pursuant to Federal, State, or County rules, regulations and policies that are applicable to the Project and shall give specific answers to questions from the County, from time to time, relative to the Borrower's contracts and operations in connection with the Project.

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## II. Amount and Terms of HOME Funding

A. The County shall distribute to Borrower, as Borrower's portion of the total funds received by the County under the HOME Program and in consideration of Borrower's undertaking to perform the Project, a maximum of **\$750,000.00** (herein called "HOME Funding"), to be paid in the manner set forth herein in Section's II, III, IV, and VII.

B. The County shall make available for distribution to Borrower for reimbursement of eligible costs, HOME funds as described in Section II-A herein upon receipt by Kane County of HOME Funding from the U.S. Department of Housing and Urban Development, the execution and filing of record of a Mortgage against the Property to secure said funds, and the execution and filing of appropriate deed restrictions as described in Section I.B.9 to secure the Affordability Period and the Extended Affordability Period of this Project.

C. HOME Funding is provided to Borrower as a Thirty year loan to be repaid under the following terms;

1. Principal and interest payments shall not be required prior to stabilized occupancy and in year's one (1) through four (4) after stabilized occupancy;
2. With respect to years five (5) through nine (9) after stabilized occupancy, the Borrower shall pay interest of \$15,000.00 annually on or before May 31<sup>st</sup> of each following year, but only to the extent of the Excess Cash Flow (as defined in the following paragraph) for the year to which the payment relates that remains available before the payment of an annual asset management fee payable to Elgin Artspace Lofts, LLC or Artspace Projects, Inc. ; and
3. With respect to years ten (10) through thirty (30) after stabilized occupancy, the Borrower shall pay principal and interest in the amount of \$44,089.00, annually on or before May 31<sup>st</sup> of each following year, not to exceed (other than with respect to the final maturity date) the amount of Excess Cash Flow (as defined in the following paragraph) for the year to which the payment relates that remains available before the payment of an annual asset management fee payable to Elgin Artspace Lofts, LLC or Artspace Projects, Inc.

The term "Excess Cash Flow" shall mean, as determined on an annual basis after the completion of the Fiscal Year of the Borrower for which the determination is being made, the amount of actual cash revenue that the Borrower received from the operation of the Project, less;

- a) actual costs and expenses of developing, constructing, owning, operating, maintaining, and improving the Project,
  - b) actual debt service on all Project indebtedness (including any deferred development fee payable to Artspace Projects, Inc.),
  - c) accruals for any operating deficit reserves, debt service reserves, repair and replacement reserves, tax or other imposition reserves, and insurance and maintenance reserves, and
  - d) amounts, if any, that Borrower is obligated to pay to its Investor Partner as adjuster payments with respect to shortfalls or recaptures of low-income housing tax credits pursuant to the Partnership Agreement.
4. Year one is defined as the first year of stabilized occupancy.
  5. If the Borrower determines that there isn't sufficient Excess Cash Flow to make payments to the County, the Borrower agrees to provide the County with any documentation that is requested to determine that there isn't sufficient Excess Cash Flow to make the required payments.
  6. Notwithstanding anything to the contrary in this Agreement, the obligation of the Borrower to repay the principal of, and the interest on, the HOME Funding under this Agreement, the Promissory Note, or any other document relating the HOME Funding is a nonrecourse obligation of the Borrower and its partners that is secured only by the Mortgage.

Upon the expiration of the Affordability Period and the fulfillment of all terms and conditions set forth herein and in the Note and Mortgage to be executed by Borrower the Mortgage shall be released by the County.

- D. Borrower shall consent to the filing and recording of deed restrictions and covenants

running with the land, prepared in a form approved by the County, that are necessary for securing the Affordability Period specified in Section I.B.9 of this Agreement and Borrower understands that if Borrower is not the record owner of the Property, that such record owner must consent to the filing and recording of deed restrictions as hereinabove described prior to any funds being disbursed under this Agreement.

E. The terms expressed in the County's conditional commitment, dated November 8, 2010 and later modified on March 16, 2011, are incorporated into this Agreement by reference and attached as Exhibit A. If there is an inconsistency between a term in the conditional commitment, as modified, and this Agreement, this Agreement shall control.

F. Borrower shall be responsible for the contribution of a minimum of \$3,753,500.00 in qualified matching funds to the Project; this match will come from the following sources;

1. City of Elgin Land Donation	\$2,607,000.00
2. City of Elgin Predevelopment Grant	\$400,000.00
3. City of Elgin TIF funds	\$250,000.00
4. Local Employer Donations	\$296,500.00
5. National Ed. Foundation	\$200,000.00

All evidence of said matching funds shall be in accordance with the Act.

### **III. Borrower's Compliance with the Act**

A. County shall assist Borrower in complying with the Act and the rules and regulations promulgated for implementation of the Act.

B. County, as a condition to this HOME Funding, requires the Borrower, when applicable, (1) to assist in the completion of an environmental review as needed for the Project and (2) complete certifications showing equal employment opportunity compliance including equal employment opportunity certification with reference to the Project.

### **IV. Borrower's Performance under this Agreement**

A. Borrower agrees and authorizes the County and HUD to conduct on-site reviews, examine the Borrower's records, rental applications, and to conduct any other procedures or practices to assure compliance with these provisions.

B. Borrower agrees not to violate any (state or federal) laws, rules or regulations regarding a direct or indirect illegal interest on the part of any employee or elected official of the County in the Project or payments made pursuant to this Agreement.

C. Borrower agrees that to the best of its knowledge, neither the Project nor the funds provided therefor, and the personnel employed in the administration of the program shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code, referred to as the Hatch Act.

D. Borrower shall, each year as long as the HOME Funding remains unpaid, complete an audit of the Project, conducted by an independent Certified Public Accountant, and shall submit said audit to the County.

E. County shall provide, upon request, copies of all laws, regulations and orders cited in this Agreement.

F. Borrower and County shall at all times observe and comply with Title 24 CFR Part 92 and all applicable laws, ordinances or regulations of the federal, state, County, and local government, which may in any manner affect the performance of this Agreement, and Borrower shall perform all acts with responsibility to the County in the same manner as the County is required to perform all acts with responsibility to the federal government.

G. Borrower hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements with respect to the acceptance and use of HOME funds in accordance with the Act and the policies of the County as applicable to the HOME Program. Also, Borrower certifies with respect to the project that:

1. The project will be conducted and administered in compliance with applicable federal civil rights and fair housing law, including, but not limited to:

a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. Sec 2000d et seq.) and implementing regulations issued at 24 CFR Part I;

b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-208, 42 U.S.C. Sec 2000d et seq.), as amended; and that the Borrower will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing; and

c. The Fair Housing Act (42 U.S.C. 3601-20).

2. Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with 92.636 and 24 CFR Part 35.

H. The Borrower shall comply with all applicable administrative and procurement requirements as applied to the HOME program in accordance with 24 CFR Part 35:

I. If applicable, the Borrower shall comply with the Federal Labor Standards and Prevailing Wage Rates as applied to the HOME program in accordance with Title 29 of the Code of Federal Regulations, Part 5. Originals of all documents required for compliance with the Federal Labor Standards shall be supplied to the County.

J. Borrower agrees that it will not discriminate against any employee who is employed in carrying out work resulting from assistance provided by Kane County and the U.S. Department of Housing and Urban Development, or against any applicant for such employment, because of race, color, religion, sex, age or national origin, including but not limited to employment,



upgrading, demotion or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower further agrees to the following:

1. It will incorporate or cause to be incorporated into any grant contract, loan, grant insurance or guarantee involving federally assisted construction work, or modification thereof, which is paid for in whole or in part with funds obtained from the HOME Investment Partnerships Program, the language contained in HUD Equal Employment Opportunity Regulations at 42 CFR 130.15(b), in Executive Order 11246, as amended by Executive Orders 11375 and 12006, and implementing regulations issued in 41 CFR Chapter 60.
2. It will be bound by said equal opportunity clause with respect to its own employment practices when it participates in any HOME Program construction.
3. It will assist and cooperate actively with the County, the U.S. Department of Housing and Urban Development, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor.
4. It will furnish the County, the U.S. Department of Housing and Urban Development, and the Secretary of Labor such information as they may require for the supervision of such compliance, and will otherwise assist the County and the U.S. Department of Housing and Urban Development in the discharge of primary responsibility for securing compliance.
5. It will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for government contracts and federally assisted construction contracts pursuant to the Executive Order.
6. It will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Secretary of Labor, the County, or the U.S. Department of Housing and Urban Development.
7. In the event that Borrower fails or refuses to comply with the undertaking, the County, or the U.S. Department of Housing and Urban Development may take any or all of the following actions: Cancel, terminate or suspend in whole or in part this grant, refrain from extending any further assistance to Borrower until satisfactory assurance of future compliance has been received; and refer the case to the U.S. Department of Housing and Urban Development for appropriate legal proceedings.

**V. Rights to Subcontract**

A. Borrower is herewith granted authority to subcontract all or any portion of the Project, as allowed by the County's HOME policies, to such entities as Borrower shall deem appropriate or necessary and upon such terms as may be acceptable to Borrower.

B. Borrower shall make reasonable efforts to assure the best available price for any subcontracts for rehabilitation activities associated with the Project.

C. Administration of any subcontracts by the Borrower shall be in conformance with 24 CFR Part 85.

**VI. County's Obligation to Prosecute Agreement**

A. County shall forthwith file all applicable documents and shall comply with all applicable rules and regulations to secure a release of funds for the Project.

B. After the County has received notification that funds for the Project have been released by HUD, the Borrower shall be authorized to begin the Project so long as the Project remains in compliance with the HOME Program and this Agreement.

C. County agrees to abide by the Act, and all HUD rules and regulations promulgated to implement the Act.

**VII. Billing Procedure**

A. Upon release of funds by HUD for the Project, the County shall make disbursements to the Borrower in compliance with II.B above. All claims of Borrower shall comply with the following requirements:

1. Borrower shall submit a listing of all disbursements of HOME Funding, on a form provided by the County.

2. Any request for reimbursement or advancement pertaining to work under subcontracts shall include Borrower's certification as follows:

a. For interim payments to the subcontractor, that the work for which payment is requested has been performed and is in place and to the best of Borrower's knowledge, information and belief that, the quality of such work is in accordance with the subcontract, subject to: (i) any evaluation of such work as a functioning project upon substantial completion; (ii) the results of any subsequent tests permitted by the subcontract; and (iii) any defects or deficiencies not readily apparent upon inspection of the work; and

b. For final payment, that the work has been performed in a satisfactory manner and in conformance with the subcontract.

3. Borrower shall forward to the County all billings, vouchers, and other documents representing any accounts payable, in such timely and reasonable manner as both

parties shall determine.

4. Borrower shall cooperate with the County to facilitate the maintenance of financial records by the County as required by Title 24 CFR Part 92.

B. Immediately upon submission of a billing for the HOME Funding, which shall include all required supporting documentation as described in Sections II-B and/or VII-A, County shall process such claim and shall approve such claim for payment following approval for compliance with this Agreement and applicable HUD requirements by each of the following: (1) County Auditor; (2) County Treasurer; and (3) County Finance Department.

C. County shall be responsible, except as provided for in Sections IX and X hereof, for paying which the County determines are eligible and which are incurred by Borrower under this Agreement.

### **VIII. Administration and Reporting Requirements**

A. Borrower shall administer the HOME Funds in conformance with the regulations, policies, guidelines and requirements of Title 24 CFR 92, as they relate to the acceptance and use of federal funds for the Project.

B. Borrower shall submit all required information to show compliance with applicable laws, rules and regulations, as specified in this Agreement, including but not limited to the following:

1. An initial rent schedule that is in compliance with the affordability standards described in Section I.B.6 of this Agreement.

2. Copies of the standard leases that are in compliance with 24 CFR Part 92.253.

3. A description of the method of income calculation that is in compliance with applicable regulations.

4. Tenant income documentation for all initial lease-ups that is in compliance with HOME requirements and demonstrates compliance with the income targeting specified in Section II-B of this Agreement.

5. Documentation of matching contribution as specified in Section II-F of this Agreement.

C. Borrower shall provide a Progress Report to the County by the twentieth day of each month covering the activities of the previous month, reporting on the status of the project in relation to the completion dates referred to in Section XI. The progress reports shall begin one month following the signing of this Agreement and shall continue until the Project is closed out.

D. Borrower shall submit each year to the County an annual report of the occupancy of the Project in a form prescribed by the County.

E. Borrower shall maintain all records pertaining to the Project required by Title 24 CFR Part 92 for the applicable period required by Title 24 CFR Part 92.

**IX. Termination of Agreement or Suspension of Payment**

A. During the implementation of the Project, County may terminate this Agreement or may suspend payment of HOME Funds to Borrower for Borrower's breach of the Agreement, abandonment of the Project or occurrence rendering impossible the performance by Borrower of this Agreement.

B. During the implementation of the Project, the County may suspend payments of HOME Funding due to use of funds in a manner unrelated to Borrower's performing the Project, failure by Borrower in submitting supporting information or documentation for a claim, submission by Borrower of incorrect or incomplete reports, or Borrower's suspension of its pursuit of the Project.

C. In the event County elects to terminate this Agreement or to suspend payments, for any reason stated hereinabove in paragraph A and B of this Section IX, it shall notify the Borrower and its Investor Partner in writing of such action, specifying the particular deficiency, and allowing the Borrower 30 days to refute or cure alleged deficiency at a time prior to County's taking any such action. The Investor Partner also shall have the right, but not the obligation, to refute or to cure any alleged deficiency during such 30-day period, and, if the Investor Partner refutes or cures, the County will treat it as the Borrower's action. After allowing the Borrower and the Investor Partner the opportunity to refute or correct the alleged deficiency, if the alleged deficiency continues to exist, in the reasonable opinion of the County, the County may withhold payment to the Project until such time as the violation or breach is remedied. No action taken or withheld by the County under this paragraph shall relieve the Borrower of its liability to the County for any funds expended in violation of any of the terms of this Agreement.

D. Upon expiration or termination of this Agreement, the Borrower must transfer to the County any HOME Funding at the time and any account receivable attributable to the HOME Funding.

**X. Remedies**

A. In the event of any violation or breach of this Agreement, including but not limited to, Borrower's misuse or misapplication of funds derived from this Agreement, by Borrower's violation of any of the statutes, rules and regulations of HUD, either directly or indirectly, by the Borrower and/or any of its agents or representatives, then Borrower, to the extent permitted by law, absent a specific appropriation or budget, agrees to indemnify, and hold the County harmless from any requirement to repay to HUD the HOME Funding received by Borrower for this Project or penalties and expenses, including reasonable attorneys fees and other costs of litigation, resulting from such action or omission by Borrower.

B. In the event HUD, or any other federal agency, makes any claim which would give rise to invoking the remedy provisions, as set forth in paragraphs A and B of this Section X, then the

County or Borrower shall immediately notify the other party in writing, providing the full details of the alleged violation. The party owing the remedy for alleged breach shall have the right to contest the claim, in its own name or in the name of the other party, through all levels of any administrative proceedings or in any court of competent jurisdiction without any cost to the other party. Upon any final adjudication, or upon any settlement agreed to between the party alleged to have breached this Agreement and the Federal agency, the allegedly breaching party shall promptly pay any funds found due and owing.

C. As long as the party entitled to the remedy is not in jeopardy of losing any other federal funding, of any kind or description, as a result of the alleged breach, the allegedly breaching party shall have complete right to settle or compromise any claim and to pay any judgment to the federal government, so long as the party entitled to the remedy is indemnified.

D. If either party has lost or been prevented from receiving any federal funds, other than the funds for the Project, as a result of any alleged violation subject to the remedy provisions hereof, the alleged breaching party shall repay, upon demand by the other party, such amount of HOME Funding due, as a result of the alleged breach, and the alleged breaching party may then pursue any remedy it may have in an appropriate forum in its own name or in the name of the other party, whichever is applicable.

E. The Borrower agrees to indemnify and hold harmless the County, its officials, board members, constitutional officers, and officers, agents, attorneys and employees (each an "indemnified party") against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done or omitted to be done on the Project while the HOME Funding remains outstanding, and against and from all claims arising while the HOME Funding remains outstanding including but not limited to (i) any condition of the Project, (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Agreement, the Note or the Mortgage, (iii) any act of negligence of the Borrower or of any of its agents, contractors, servants, employees or licensors, (iv) any act of negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower, (v) any performance by any indemnified party of any act required under this Agreement or the Mortgage to be performed by the Borrower, or requested by the Borrower, for which the indemnified party did not have already an obligation to perform; excluding, however, claims occasioned by the negligence or willful misconduct of any indemnified party. The Borrower agrees to indemnify and save any indemnified party harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Borrower, upon receipt of notice in writing from the indemnified party setting forth the particulars of such claim or action, the Borrower shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. In any such action any indemnified party shall have the right to employ separate counsel mutually acceptable to the indemnified party and the Borrower and to participate in the defense thereof; provided that if the indemnified party and the Borrower cannot agree on mutually acceptable counsel, the indemnified party shall have the exclusive right to select such counsel. The fees and expenses of

such counsel reasonable incurred shall be at the expense of the Borrower without regard to any authorization of such employment by the Borrower.

**XI. Timeliness**

A. Time is of the essence. Borrower shall be responsible for meeting the completion dates for the activities listed below. If Borrower does not meet a completion date within two months after the date listed, Borrower shall submit a revised implementation schedule for approval by the County.

<b>Project Milestones</b>	
<b>Activity</b>	<b>Completion Date</b>
Closing on Site Acquisition	August 31, 2011
Closing on Project Financing	August 31, 2011
Start Construction	September 30, 2011
Construction Completed	September 1, 2012
Certificate of Occupancy Issued	September 30, 2012
100% Occupancy	December 31, 2012

B. Borrower shall complete expenditure of 97.5% or \$731,250 of HOME Funds pursuant to the Project within seven (7) months from the date of this Agreement. However, in the event of any alterations or additions or of circumstances beyond the control of Borrower, which in the opinion of the County will require additional time for completion of said expenditures, then in that case, the time of completion shall be extended by the County by a period of time not to exceed three (3) months. The balance of the HOME funds or \$18,750 will be made available to the Borrower after all ten HOME designated units are occupied.

C. After a period of ten (10) months from the date of this Agreement, the County may review the progress of the Project. At the time of this review, if the Borrower has not demonstrated significant progress toward completion and, if the Borrower has not made substantial effort toward completion and delays are determined by the County to be within the control of the Borrower; the County may terminate this Agreement, suspend all further payments, and notify the Borrower of its action.

D. If Borrower is delayed in the completion of the Project by any cause legitimately beyond its control, as determined by the County, such that it cannot complete the Project by December 31, 2012, it shall immediately give written notice to the County of the anticipated delay, the reasons therefor and request an extension of time for completion of the Project. The County shall immediately consider the request and notify the Borrower whether the time extension is granted or denied, and the County's intention to exercise the remedies available herein, including but not limited to suspension of further payments. The Borrower shall submit a revised implementation schedule if the County grants an extension.

E. This Agreement shall remain in full force and effect as long as the HOME-funded mortgage on the Property, as defined in this Agreement, remains in effect.

**XII. Miscellaneous Provisions**

A. Amendments: This Agreement constitutes the entire Agreement between the parties hereto. Any proposed change in this Agreement shall be submitted to the other party for prior approval. No modifications, additions, deletions, or the like, to this Agreement shall be effective unless and until such changes are executed in writing by the authorized officers of each party.

B. Subject to Financial Assistance Agreement: This Agreement is made subject to financial assistance agreements between the County and the U.S. Department of Housing and Urban Development, with the rights and remedies of the parties hereto being in accordance with this Agreement.

C. Assignment: Except as provided in Section VI hereof, Borrower shall not assign this Agreement or any part thereof, and Borrower shall not transfer or assign any property or assets acquired using HOME Funding or claims due or to become due hereunder, without the written approval of the County having first been obtained.

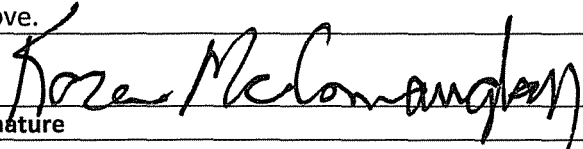
D. Attorney's Opinion: If requested, Borrower shall provide an opinion of its attorney, in a form reasonably satisfactory to the State's Attorney's Office, that all steps necessary to adopt this Agreement, in a manner binding upon Borrower, have been taken by Borrower.

E. Headings: The section headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement, and should be ignored in construing or interpreting this Agreement.

F. Severability: In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

G. Agreement Duration: Unless determined by the County pursuant to the terms of this Agreement above, this Agreement will remain in effect for the period of affordability required by both Federal regulation and the County has been completed.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.


Signature
Karen McConaughay, Chairman, Kane County Board
Name & Title
Date

<b>Signature</b>
<b>Gregory P. Handberg, Vice President of Elgin Artspace Lofts, LLC, the general partner of Elgin Artspace Lofts Limited Partnership</b>
<b>Name &amp; Title</b>
<b>Date</b>