



December 19, 2012

Jennifer Hall
Executive Director
Ann Arbor Housing Commission
404 N. Ashley
Ann Arbor, MI 48103

Re: Rental Assistance Demonstration

Dear Jennifer:

This letter, when countersigned on behalf of Ann Arbor Housing Commission (the "Client"), will constitute an agreement (the "Agreement") to engage Recap Real Estate Advisors ("Recap") to provide the services detailed in Section 2 below.

1. **Background.** The Client is a public housing authority, and is seeking to convert public housing units under the Client's existing Annual Contribution Contract ("ACC") subsidies (both Operating Fund and Capital Fund) to long-term project-based Section 8 rent subsidy through HUD's Rental Assistance Demonstration program ("RAD"). The Client applied for, and has been awarded:
 - a. A RAD Commitment to Enter into a Housing Assistance Payments ("CHAP") for the properties commonly known as the West Scattered Site units, representing 166 of the 179 units within the HUD Asset Management Project ("AMP") #MI-064-000-100 (the "West Properties"); and
 - b. A RAD CHAP for the properties commonly known as the East Scattered Site units, representing 116 of the 176 units within the HUD AMP #MI-064-000-200 (the "East Properties" and, collectively with the West Properties, the "Properties").
2. **Services Provided.** Recap will provide the Client with financial and transaction advisory services in connection with the RAD conversion of the Properties, including the services set forth below. Throughout this engagement, in the course of providing the specified services, Recap will regularly coordinate with and update the Client regarding the status of the structuring, negotiations, approvals and transaction process. Recap will also work with such other professionals and advisors as requested to achieve the Client's goals.
 - a. **Scope #1 – RAD Transaction Processing** – In connection with the RAD implementation and compliance with HUD's RAD regulations and instructions, Recap will:
 - i. Ensure the RAD HUD approval process is completed through closing of the financing of the transactions and in doing so shall prepare, revise, manage submission to HUD and respond to HUD questions and comments regarding

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required RAD documentation, including:

1. The Lender Engagement or Commitment letter(s);
2. The statement of development team capacity;
3. The statement of completion of industry standard due diligence;
4. The certification of firm lender commitment;
5. The Financing Plan

ii. Advise and assist the Client through closing of the conversion and closing of the debt and equity, including:

1. Assist the Client in coordinating and managing the transaction team towards implementation of the transaction with respect to the HUD transaction processing requirements;
2. To the extent requested by the Client, advise and assist the Client, to coordinate financing and, if applicable, tax-credit syndication related tasks, including negotiation of loan and equity terms and management of the underwriting and due diligence process;
3. Review closing documents for consistency with the financial plan and RAD requirements and for terms appropriate to the Client's goals and objectives;
4. To the extent requested by the Client, advise and assist the Client, to coordinate financing and, if applicable, tax-credit syndication related tasks, including negotiation of co-developer, loan and equity terms.

b. Scope #2 – Tax Credit Applications –

i. If authorized to do so in writing, which shall include e-mail authorization from Jennifer Hall to this effect, Recap will assist the Client in the preparation of one or more 9% low income housing tax credit application(s) pursuant to the State of Michigan Qualified Allocation Plan for some components or for all of the units within the Properties.

ii. If authorized to do so in writing, which shall include e-mail authorization from Jennifer Hall to this effect, Recap will assist the Client in the preparation of one or more 4% low income housing tax credit application(s) pursuant to the State of Michigan Qualified Allocation Plan for some components or for all of the units within the Properties.

c. Scope #3 – Social Services – If authorized to do so in writing, which shall include e-mail authorization from Jennifer Hall to this effect, Recap will assist the Client in the development of a supportive housing program if the Client applies for low income housing tax credits under the Permanent Supportive Housing Category.

d. Scope #4 – Gap Funding Applications – If authorized to do so in writing, which shall include e-mail authorization from Jennifer Hall to this effect, Recap will assist the Client in the preparation of gap financing applications, including Federal Home Loan Bank, HOME, CDBG and other applications as deemed necessary by the Client.

- e. Scope #5 – Advisory Services with respect to Client’s Developer Partner – Recap will provide guidance to the Client with respect to issues for decision presented to the Client by the Client’s developer-partner (to be selected), and shall assist the Client in ensuring that the Client is treated fairly in the joint venture efforts.
 - f. Related Services. Although not contemplated as services to be provided under this Agreement, the following services can, upon request documented by an addendum to this Agreement, be engaged as a supplement to the work contemplated by this Agreement. Such additional services could include:
 - i. Subcontracting for professional studies such as market studies, environmental reports, capital needs assessments, energy audits, appraisals, etc., including, through Recap’s affiliate, On-Site Insight, the issuance of a capital needs assessment consistent with the physical needs analysis anticipated under the RAD notice; and
 - ii. Overall project management, including the management of architectural design, construction planning, relocation, etc.
3. **Limitation on Services**. Under this Agreement, Recap will not provide the following services:
- a. *Architectural Design or Construction Management*. Recap will not manage the architectural design of the capital improvements, construction planning, the pricing and negotiation of construction documents, the engagement of a construction contractor, construction management, construction inspections or the construction requisition process.
 - b. *Relocation*. Recap will not manage any applicable relocation planning, coordination with property management regarding occupied rehab, or resident assistance in connection with the implementation of the capital improvements.
 - c. *Certain Professional Services*. Recap will not provide the professional studies, such as market studies, environmental reports, appraisals, etc., which may be required by lender or investor due diligence. Recap will assist the Client in identifying and engaging appropriate professionals to provide such studies.
 - d. *Transaction Guaranties* – Recap will not provide the guaranties which the lenders or equity investors may seek from the transaction sponsors (such as construction completion guaranties or operating performance guaranties).
 - e. *Accounting or tax advice*. Recap will not provide any advice on tax, accounting policy, or accounting implications of the recommended actions.
 - f. *Legal advice*. Recap will not provide any legal advice, including without limitation legal review of the transaction documents.
 - g. *Appraisal services*. Neither Recap nor any principal or executive thereof is an MAI, a member of other real estate appraisal organizations or professional associations. No such certification is assumed.

- h. *Independent investigation.* Recap will not provide independent reports or investigations regarding data provided to it by third party sources or any information provided by the Client.
4. **Data Requirements.** The Client will disclose fully and accurately all pertinent facts regarding the Properties and any matters which would bear on Recap's ability to perform the services described in Paragraph 2, above. In addition, the Client will cooperate with Recap as Recap performs its duties under this agreement, will be available for meetings, conferences, telephone conversations, and other proceedings as appropriate, and will take such other actions as may be needed to remove obstacles that might prevent Recap from successfully providing its services.
5. **Compensation.** For services provided under Section 2 of this Agreement, Recap will be compensated as follows:
- a. With Respect to Scope #1 and Scope #5. In connection with the services provided pursuant to Scope #1 (Section 2(a), above) and Scope #5 (Section 2(e), above), Recap will be compensated with a fixed fee of Seventy Thousand and 00/100 Dollars (\$70,000.00), fully earned and due as follows:
- i. Fifteen Thousand and 00/100 Dollars (\$15,000.00) during the predevelopment period, upon issuance of the RAD Conversion Commitment for the West Properties;
 - ii. Fifteen Thousand and 00/100 Dollars (\$15,000.00) during the predevelopment period, upon issuance of the RAD Conversion Commitment for the East Properties;
 - iii. Twenty Thousand and 00/100 Dollars (\$20,000.00) upon closing of the RAD transaction for the West Properties; and
 - iv. Twenty Thousand and 00/100 Dollars (\$20,000.00) upon closing of the RAD transaction for the East Properties.
 - v. The fee amounts specified for Scope #1 and Scope #5, under this Section, are premised on the expectation that both the East Properties transaction and the West Properties transaction will be implemented in parallel, without material variation in the identity of the development team members (including, without limitation, the investor, lenders, architect, contractor and co-developer) and without material variation in the timing of major milestones (including, without limitation, the due diligence process, the submission of HUD regulatory requirements and the financial closing). Implementation of the two transactions in parallel will generate significant operational efficiencies in the performance of the work. In the event there are material variations in the identity of the development team members or in the timing of major milestones, Recap shall have earned an additional fee of Thirty Five Thousand and 00/100 Dollars (\$35,000.00), due upon the

latter of the financial closing of the East Properties RAD transaction or the financial closing of the West Properties RAD transaction.

- vi. In recognition of the fact that a significant portion of the compensation in connection with Scope #1 and Scope #2 is deferred until closing of a recapitalization transaction, in the event that the Client terminates this Agreement at any point after the date which is fourteen (14) calendar days after receipt of the RAD Conversion Commitment for the applicable Property and then Client subsequently achieves a closing of a recapitalization transaction for the Property, under RAD or under any alternative financing structure, within twenty four (24) months thereafter, Recap shall be entitled to payment of the fees due on closing pursuant to this Section.
- b. With Respect to Scope #2. In connection with the services provided pursuant to Scope #2 (Section 2(b), above), Recap will be compensated with a fixed fee, fully earned and due as follows:
 - i. Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500.00) for each separate low income housing tax credit application for "9% tax credits" timely submitted under the State of Michigan Qualified Allocation Plan; and
 - ii. Five Thousand and 00/100 Dollars (\$5,000.00) for each separate low income housing tax credit application for "4% tax credits" timely submitted under the State of Michigan Qualified Allocation Plan.
- c. With Respect to Scope #3 and Scope #4. In connection with the services provided pursuant to Scope #3 (Section 2(c), above), and Scope #4 (Section 2(d), above), Recap will be compensated on a time-charged basis using Recap's standard hourly rates (attached as Exhibit 1, hereto, and subject to routine adjustment on or around January 1 of each year). Recap staff shall undertake reasonable efforts to devote travel time to productive work (either for the Client or for third parties) and shall bill such time to the appropriate client. Travel time during which Recap's staff is unable to reasonably perform other productively work shall be billed at one-half the standard billing rate. Upon request from the Client, Recap and the Client shall negotiate in good faith to determine a fixed fee amount for specific tasks within Scope #3 or Scope #4 at such time as the specific tasks can be defined with sufficient clarity to justify a fixed fee.
- d. Reimbursable Expenses. In addition to the fees specified above, Recap shall be entitled to receive full reimbursement for all direct out-of-pocket costs and expenses, if any, associated with the services to be provided hereunder, including (but not limited to) express services, travel and related expenses, cost of any third party reports, and any other direct costs. Recap will obtain approval from the Client for any one-time expenditure exceeding \$500. E-mail authorization shall be deemed sufficient for this purpose.

- e. **Billing.** Recap may bill the Client monthly for time-charged fees or fee milestones then due and for any reimbursable expenses, and invoices shall be due and payable within thirty days of receipt. The Client will be responsible for any costs of collection (including attorneys' fees) as may be allowed by law.
6. **No Representations or Warranty of Success.** Although Recap will use its best efforts to ensure the Client achieves its objectives for this engagement, there is no representation or warranty, expressed or implied, that Recap's efforts will produce specific outcomes for the Client.
7. **Termination.** Either party may terminate this Agreement upon thirty (30) calendar days' written notice or annually upon the anniversary of the date hereof. The term of this Agreement shall not exceed a total of five (5) years. Upon written notice of termination by either party, Recap shall suspend work as quickly as reasonable while protecting the work completed to date, and the Client shall pay for services performed upon receipt of appropriate invoices.
8. **Nature of Relationship.** The relationship between Recap and Client is that of client and contractor, and not employer and employee. No employee, agent, or subcontractor of Recap shall be deemed to be an employee, agent, or subcontractor of the Client. Recap shall have no authority to represent or bind the Client in any manner.
9. **Indemnification.** Recap hereby indemnifies and holds harmless the Client, its principals, shareholders, agents and representatives, from any claims, causes of action, lawsuits, demands or any other costs (including legal fees) that may be incurred as a result of actions undertaken by Recap. Recap's liability under this Section shall not exceed the total compensation received by Recap hereunder. Provided Recap is not negligent in performing its duties, the Client hereby indemnifies and holds harmless Recap, its principals, shareholders, agents and representatives, from any claims, causes of action, lawsuits, demands or any other costs (including legal fees) that may be incurred as a result of Recap's work in connection with this engagement, as a result of actions undertaken by Recap at the behest of the Client, or actions taken by the Client or others in full or partial reliance on the services, information or work product provided by Recap.
10. **Confidentiality.** Recap agrees to retain all non-public information obtained from the Client or the Client's associated professionals (including accountants, attorneys, appraisers, engineers, or others) as confidential and agrees not to release or discuss any such information unless Recap has obtained the prior consent of the Client or is otherwise forced, compelled or required to disclose this information by operation of law or applicable government. Recap may, however, include the Client's identification and a general description of the engagement on Recap's client list and marketing materials. Reports, proposals, recommendations and the like provided by Recap (except those expressly intended for dissemination to regulators or potential new funding sources) shall be considered proprietary, shall be for the exclusive use by the Client for its business purposes and may not be disseminated by Client or by others without Recap's express written consent.

11. **Governing Law.** In the event of any dispute or issues, this Agreement and relationship between Client and Recap shall be governed by the laws of the State of Michigan.

ACCEPTANCE AND AGREEMENT

If the foregoing is acceptable, please countersign below, whereupon it will constitute our Agreement. We look forward to working with you on this engagement.

ANN ARBOR HOUSING COMMISSION

RECAP REAL ESTATE ADVISORS

By: Jennifer Hall
Name: Jennifer Hall
Its: Executive Director
Date: 12/21/12

By: _____
Name: _____
Its: _____
Date: _____