

PROJECT NAME: Porchlight Safe Haven Relocation
CFDA: 14.239

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2007, by and between PORCHLIGHT, INC, a Wisconsin nonstock corporation ("Borrower"), whose principal business office is located at 306 N. Brooks Street, Madison, WI 53715 and THE CITY OF MADISON, a Wisconsin municipal corporation (the "City") whose business address for matters related to this Agreement is at its Community Development Block Grant Office, 215 Martin Luther King Jr. Blvd., Suite 280, Madison, Wisconsin 53703.

WITNESSETH:

WHEREAS, the City is a "Participating Jurisdiction" under the Federal HOME Investment Partnerships Program (the "HOME Program") as described in 24 CFR Part 92 (the "Regulations"); and

WHEREAS, the Borrower will acquire real estate in the City of Madison (the "Property"), which will be operated as affordable rental housing by Porchlight, Inc. as required by this Agreement and the Regulations (the "Project");

WHEREAS, the City has agreed to partially finance the Project with the proceeds of a loan of HOME funds (the "Loan") in the amount of \$312,559.00. Of this amount, up to 15% will be provided as a development fee and the remainder will be provided in the form of a loan. The Loan will be evidenced by a Promissory Note (the "Note") from the Borrower to the City, dated as of the date of each disbursement for a Property, and secured by a Real Estate Mortgage (the "Mortgage") from the Borrower to the City for each Property; of this amount, and

WHEREAS, the City and Borrower are to enter into a Land Use Restriction Agreement (the "Land Use Restriction") for each Property providing for certain restrictions on the use of each Property; and

WHEREAS, as an inducement to the City to provide the Loan to Borrower, Borrower is willing to enter into this Agreement;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Use of Funds. The Loan proceeds are to be applied as shown in the budget attached hereto as Attachment A which is incorporated herein by reference. Borrower shall complete the acquisition or construction of seven (7) SRO units on or before December 31, 2008. If the project involves plans for new construction of a development totaling more than 16 units, the Borrower will get prior approval from the CDBG Commission. Borrower shall provide all funds in addition to the proceeds of the Loan which may be necessary or convenient to complete the Project.
2. Other Documents. The terms of the Notes, Mortgages and Land Use Restrictions (together, with this Agreement, the "Loan Agreements"), are hereby incorporated herein by reference, and noncompliance with any term or condition of any of them shall be deemed a default hereunder.
3. The Loan.
 - (a) Subject to the terms and conditions of this Agreement, the Mortgage executed in connection herewith, the Note given to evidence the Loan, Land Use Restriction Agreement to be executed in connection herewith and such other documents related to this transaction, the City agrees to loan Borrower the sum of Three Hundred Twelve Thousand Five Hundred and Fifty Nine Dollars (\$312,559) for the purpose of acquiring or constructing the Properties.
 - (b) Prior to the City releasing the Loan funds, the Borrower shall:

- (1) Execute a Mortgage, Note and a Land Use Restriction Agreement for the Property, each in a form acceptable to the City;
 - (2) Deliver to the City before the closing on the Property being acquired, a standard ALTA commitment (rev. 10/17/92) for a loan policy of title insurance in the amount of the HOME assistance for such Property, which will be subject only to municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and taxes levied in the year of closing; and
 - (3) Provide evidence of insurance as required by the Mortgage.
- (c) The Land Use Restrictions Agreement shall be recorded on the Property before any other documents creating an encumbrance upon the site, including the Mortgage and documents evidencing the first mortgage or construction loan to Borrower. Recording fees shall be paid by Borrower.
4. Project Requirements. The Borrower shall comply with the HOME Project requirements set forth in 24 CFR Part 92, Subpart F (Project Requirements), as applicable to the Project and the HOME Units, as that term is defined in the Land Use Restrictions. The HOME Units are designated as floating units and must meet the requirements of 24 CFR 92.252(j). The Project shall be operated as "affordable housing" as defined in 24 CFR 92.252 (Rental Housing). The period of affordability for units acquired with HOME funds is 15 years or as determined by HOME regulations.
- (a) The Borrower shall report to the City those sources of support which are recognized as being a form of matching contribution, as set forth in Sec. 92.220 of the Regulations.
 - (b) Environmental review and clearance must be obtained from the CDBG Office prior to release of funds and prior to committing any funds for the Project. The Borrower shall request an environmental review of any Property to be assisted with HOME funds.
 - (c) The Borrower will comply with the following:
 - (1) Shall provide the CDBG office with a complete project pro-forma for review and approval prior to releasing any funds. The pro-forma shall include a projected revenue and expense sheet for the Property, including a statement of revenue source, a site pro-forma for projected rent and operating costs, a detail of the projected final rent cost to tenants, and projected rehabilitation costs.
 - (2) Submit the Inspection Request Form Attachment C a least 20 business days prior to date of occupancy. The Borrower shall not occupy any of the units until the units have passed inspection by an inspector under contract to the City of Madison CDBG Office.
 - (3) Shall, prior to renting any units, submit to the CDBG Office for review and approval an Affirmative Marketing plan for the project, a Tenant Selection plan and the lease form for the HOME units. See HOME Investment Partnerships Program Final Rule 24 CFR 92.253 Tenant and Participant Protections for guidance on the Tenant Selection plan and the lease form; see 24 CFR 92.351 for guidance on the Affirmative Marketing plan.
 - (4) Shall utilize the Loan to assist in the acquisition of Property to be used as rental housing for previously homeless households.
 - (5) Shall assure that the housing is accessible under Federal Regulations at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covers multifamily dwellings, as defined at 24 CFR part 100.201, and must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). Shall comply with all state and federal laws regarding accessibility including the Wisconsin Open Housing Law which outlines requirements for rehab of existing housing with three or more units. Borrower shall confirm with the CDBG Office the need for any accessibility modifications once the existing buildings have been selected.

- (6) Shall ensure all assisted units are in conformance with 24 CFR 92.251 Property Standards that states that housing acquired and/or rehabilitated must meet and maintain the property according to all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances.
 - (7) Shall submit Project Completion Report Attachment B parts A & B and a copy of the closing statement within two weeks of the closing and shall submit Project Completion Report Attachment B part C as soon as all the units are occupied.
 - (8) During the period of affordability, shall submit tenant information to the CDBG Office by January 1st of each year for review and approval using the Household Characteristics part of Attachment B and the HOME unit lease form; shall verify the tenant incomes in conformance with 24 CFR 92.203(a)(1)(b)(1), (c), (d) and 92.252 (h). Tenant income for HOME assisted units shall not exceed 80% AMI.
 - (9) Shall assure that following the period of affordability the rents on the HOME assisted Units shall not exceed HOME rent levels or 85% of the area FMR as determined by HUD for a unit of that size, until such time as the HOME loan is fully repaid, or unless the tenants are being supported by other Federal assistance such that they do not pay more than 30% of their income for rent of the HOME assisted unit.
 - (10) The CDBG Commission encourages improvements that lead to lower, long-term utility costs for occupants. Improvements to the unit shall include the following:
 - a. Compliance with health and safety standards such as direct vent hot water units when individual hot water heating units are provided within the assisted unit,
 - b. Protection from radon gas,
 - c. A passive solar-slab ventilation system when sub-grade areas are exposed during construction or rehabilitation, and
 - d. Within the assisted unit, features that help achieve a performance standard or energy conservation equal to 115% of the performance required by state building codes.
 - (11) Shall assure that any pass through funds for acquisition of a property by an LLC include all requirements as contained in the Loan Agreements.
- (d) The Borrower shall submit to the City:
- 1) Non Federal Financial Reports and Audits:
 - a. Contractors expending \$500,000 or more in Federal funds, from all sources, in a fiscal year shall submit the following to the CDBG Office within nine months of the end of its fiscal year:
 - i. A single or program audit conducted in accordance with the requirements of the Government Auditing Standards and OMB A-133 "Audits of Institutions of Higher Education and Other Non-Profit Institution," which shall include:
 - * A schedule of all revenues and expenditures by program and revenue source, that reconciles costs for the contract period, including a bridging schedule if the contract year and the Contractors fiscal year do not coincide. NOTE: This schedule should break out the revenues and expenses by funding source and identify the exact amount of CDBG Office funds expended for a program; other revenue should not be combined within a program description of expenses.
 - * A schedule of all real property assets; including an itemized list of all debt against each property and the terms of that debt.
 - * The CDBG Office Schedule of Findings and Questioned Costs. See Attachment D.

- ii. A copy of the management letter received from the auditor and the agency response to the management letter.
- b. Contractors expending less than \$500,000 in Federal funds, from all sources, in a fiscal year shall submit the following:

For an agency which has an annual certified audit completed:

- i. A copy of their annual certified audit, within 30 days of completion: which shall include the following schedules:

- * Report on the Internal Control structure.

- * Report on compliance with Laws, Regulations, Contracts and Grants. The City of Madison requires that the auditor plan the compliance audit such that OMB Circular A-122 is considered material to the financial statements taken as a whole. The auditor will determine:

- * Whether direct and indirect cost allocation plans are reasonable and acceptable.

- * That costs are necessary and reasonable and were allocated according to the cost allocation plan.

- * That the costs charged to the contract are based on actual costs incurred and are supported by accounting records and documents.

- * A schedule of all revenues and expenditures by program and revenue source, that reconciles costs for the contract period, including a bridging schedule if the contract year and the Contractors fiscal year do not coincide. NOTE: This schedule should break out the revenues and expenses by funding source and identify the exact amount of CDBG Office funds expended for a program; other revenue should not be combined within a program description of expenses.

- * A schedule of all real property assets; including an itemized list of all debt against each property and the terms of that debt.

- * The CDBG Office Schedule of Findings and Questioned Costs. See Attachment D.

- ii. A copy of the management letter received from the auditor, and the agency response to that letter.

Contractors which do not have annual audits completed may be requested by the CDBG Office to have an audit completed at CDBG Office expense.

UNDER NO CIRCUMSTANCES WILL THE CDBG OFFICE REIMBURSE A FUNDED AGENCY FOR ANY COSTS RELATED TO AN AUDIT UNLESS THE AGENCY IS BEING AUDITED IN ACCORD WITH THE SINGLE AUDIT ACT AND OMB CIRCULAR A-133.

- (e) Borrower will comply with the provisions of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 3535 (d), 4821 and 4851, and its implementing regulations in 24 C.F.R. 35 as well as State and local laws regarding lead paint.

City of Madison MGO 7.49	Applies whenever exterior painting or remodeling is being done to <u>any property</u> built before 1978.	Establishes standards for paint removal and safe work conditions.
State of Wisconsin Code HFS 163	Applies to any person performing, supervising or offering to perform or supervise a lead-based paint activity involving housing or a	Requires certification of all inspectors, supervisors and workers. Establishes work

	child-occupied facility constructed prior to 1978 (unless the property is occupied by the elderly or the disabled or is a zero-bedroom dwelling unit.)	practice standards.
Federal Lead Paint Regulation 24 CFR, Part 35	Applies to any HUD-CPD funded activity with requirements as listed below based on type of activity.	

(a) Summary of the Federal Regulations as implemented by HUD on September 15, 2000:

OPTION	
Presume lead & use safe work practices on all surfaces being disturbed	<p><u>≤ \$5,000 per unit rehabilitation & pre-1978 housing</u></p> <ul style="list-style-type: none"> ▪ Test paint on surfaces to be disturbed using a certified lead paint tester. ▪ Repair surfaces with LBP disturbed during rehabilitation. ▪ Safe work practices & clearance of work site, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> Exterior > 20 ft² Interior > 2 ft² in any one interior room or space >10% total surface area of interior or exterior component. ▪ Notification: <ol style="list-style-type: none"> 1. Pamphlet – “<i>Protect Your Family from Lead in Your Home</i>”; 2. Disclosure of available information or knowledge regarding presence of lead-based paint; 3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead; 4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results). ▪ Ongoing maintenance every 2 years required for HOME-assisted rehabilitation only.
Presume lead & perform standard treatments (including paint repair, cover w/polyurethane, plastic, etc., soil)	<p><u>\$5,000 - \$25,000 per unit rehabilitation & pre-1978</u></p> <ul style="list-style-type: none"> ▪ Full-risk assessment on unit receiving assistance <u>and</u> related common areas <u>and</u> exterior painted surfaces (includes paint testing, dust & soil sampling & visual evaluation) using a certified risk assessor. ▪ Interim controls performed on identified hazards (includes paint repair, enclosing or coating chewable surfaces, covering with polyurethane, plastic, etc., and bare soil). ▪ Safe work practices, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> Exterior > 20 ft² Interior > 2 ft² in any one interior room or space >10% total surface area of interior or exterior component. ▪ Clearance on unit, related common areas & exterior painted surfaces. ▪ Notification: <ol style="list-style-type: none"> 1. Pamphlet – “<i>Protect Your Family from Lead in Your Home</i>”; 2. Disclosure of available information or knowledge regarding presence of lead-based paint; 3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead; 4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results). ▪ Ongoing maintenance every 2 years required for HOME-assisted rehabilitation only.
Presume lead & abate all applicable surfaces	<p><u>>\$25,000 per unit rehabilitation & pre-1978</u></p> <ul style="list-style-type: none"> ▪ Risk assessment on unit that is assisted <u>and</u> related common areas <u>and</u> exterior painted surfaces (includes paint testing, dust & soil sampling & visual evaluation) using a certified assessor.

(deteriorated/ chewable & any surface to be disturbed)	<ul style="list-style-type: none"> ▪ Abate all interior & exterior identified hazards that have been disturbed. Remove & replace or encapsulate. ▪ Interim controls (includes paint repair, enclosing or coating chewable surfaces, covering w/polyurethane, plastic, etc., and soils) performed on identified hazards on exterior that are not disturbed by rehabilitation. ▪ Safe work practices, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> Exterior > 20 ft² Interior > 2 ft² in any one interior room or space >10% total surface area of interior or exterior component. ▪ Clearance on unit, related common areas & exterior painted surfaces. ▪ Notification: <ol style="list-style-type: none"> 1. Pamphlet – “<i>Protect Your Family from Lead in Your Home</i>”; 2. Disclosure of available information or knowledge regarding presence of lead-based paint; 3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead; 4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results). ▪ Ongoing maintenance every 2 years required for HOME-assisted rehabilitation only.
OPTION	
Perform paint testing & repair	<p><u>Unit Acquisition, Support Services, Operations & pre-1978</u></p> <ul style="list-style-type: none"> ▪ Visual assessment of all painted surfaces in unit <u>and</u> related common areas <u>and</u> exterior painted surfaces to identify deteriorated paint (assessor does not need to be certified). ▪ Paint stabilization of deteriorated lead paint (repair defective surface, remove loose paint & apply new paint). ▪ Safe work practices, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> Exterior > 20 ft² Interior > 2 ft² in any one interior room or space >10% total surface area of interior or exterior component. ▪ Clearance on unit, related common areas & exterior painted surfaces. ▪ Notifications: <ol style="list-style-type: none"> 1. Pamphlet – “<i>Protect Your Family from Lead in Your Home</i>”; 2. Disclosure of available information or knowledge regarding presence of lead-based paint; 3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead; 4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results). ▪ Ongoing maintenance every 2 years.

NOTE: Safe work practices must be completed by a State certified worker. All clearance must be done by a State certified inspector.

(b) The State of Wisconsin Department of Health and Family Services (DHFS) adopted rules to reduce lead paint hazards. A summary of the major State requirements affecting CDBG projects is as follows:

1. All lead inspectors, project designers, risk assessors, workers and supervisors must be accredited by DHFS.
2. A person certified as a supervisor of lead hazard reduction must be on the site at all times when work designed to reduce lead-based paint hazards is being performed and must have her/his certification card on the premises.
3. All workers must be individually certified and have their certification cards on the premises.
4. The supervisor of the lead hazard reduction work must notify the Wisconsin DHFS a

minimum of 10 days prior to commencing the work.

The Contractor shall conform to any local rules, including MGO 7.49, which establishes standards for paint removal and safety procedures.

**MGO 7.49
STANDARDS FOR EXTERIOR PAINTING AND REMODELING**

(1) Scope.

Owners of buildings and structures built before 1978 shall paint or remodel or cause to be painted or remodeled any painted exterior surface of such buildings or structures in conformity with the standards set forth in this section. These standards also apply if the age of the building or structure cannot be established by the owner to the satisfaction of the Department of Public Health.

- (a) Painting or remodeling includes but is not limited to work involving construction, alteration, repair, painting, paint removal or decorating.
- (b) A painted exterior surface means an exterior surface covered with paint or other surface coating material.
- (c) An exterior surface may include but is not limited to walls; windows, window assemblies and trim; soffit; fascia; doors, door assemblies and trim; porch and balcony floors and ceilings; column, handrails, and guardrails; and foundations.

(2) Standards for Paint Removal Methods.

- (a) The following methods shall not be used to remove paint or other surface coating materials without the use of adequate engineering controls:
 - 1. Open flame burning;
 - 2. Power tool cleaning including but not limited to machine sanding or machined grinding;
 - 3. Open-air abrasive blasting or stripping using sand, steel grit, steel shot, aluminum oxide, water or other abrasive media.
- (b) The methods listed in Subdivision (a) above may be used only with adequate engineering controls to the extent feasible to reduce public exposure to lead. Adequate engineering controls include but are not limited to vacuum attachments equipped with high efficiency particulate accumulator (HEPA) filters, partial containment structures, total containment structures under negative pressure or other method approved by the Director or Department of Public Health.

(3) Safety Procedures.

- (a) All windows, doors, HVAC intake vents and other entry ways into the building or structure shall be kept closed, or sealed if necessary, while work is being performed.
- (b) Plastic sheeting shall be used to prevent accumulation of dust and debris on the soil, vegetation or other surfaces adjacent to the work area. At a minimum, plastic sheeting shall be securely attached to the building or structure and extend the length of the work area.
- (c) All visible dust and debris in and around the work area and all waste work materials such as tape, plastic sheeting, mop heads, cleaning cloths, sponges, disposable clothing, filters and other disposable work materials must be cleaned up at the end of each work day during the entire painting or remodeling project. The dust, debris and disposable work materials must be placed in double 4 mil or single 6 mil plastic

bags.

- (d) Waste generated during the project shall be disposed of in conformance with all applicable local, state and federal laws and regulations. Waste shall be transported and disposed of in such a manner as to prevent lead from becoming airborne.

(4) Warning Notice.

At least two warning signs shall be conspicuously posted adjacent to the work area. The signs shall be posted at the beginning of the project and remain posted until the project has been completed. The signs shall measure at least eleven (11) inches by eight (8) inches and display the following wording:

**Caution – Paint Removal Work Area
Danger to Children and Pregnant Women**

(5) Exemption.

Persons are exempt from this ordinance if there is no lead-bearing paint present on the surfaces to be painted or remodeled or if there is no lead-bearing paint disturbed by the painting or remodeling process. Lead-bearing paint means any paint or other surface coating material containing more than 0.06% lead by weight, or showing a lead concentration of more than 0.7 milligrams of lead per square centimeter (0.7 mg/cm²) of surface area. This determination must be made prior to removing or disturbing the paint by a laboratory certified to do lead analysis through the Environmental Lead Laboratory Accreditation Program. Paint chip samples must be collected according to instructions provided by the accredited laboratory. Acceptable paint chip samples must include all layers of paint and omit any surface material such as wood, masonry, etc. A Finding of no lead-bearing paint must be supported with written documentation showing who performed the testing specifying the company or lab name and address and technician name, the date of testing, the test method used, the location and type of surface tested and the test result for each sample.

(6) Penalties.

Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) and each day or fraction of a day on which any provision of this ordinance is violated shall be deemed a separate offense. (Sec. 7.49 Cr. by Ord. 10,886, 4-14-94)

- (f) Borrower shall comply with all the requirements of 24 CFR 570.502; 24 CFR part 570.610; the applicable portions of 24 CFR Part 84; OMB Circular A-110, "Uniform Administrative Requirements"; OMB Circular A-122, "Cost Principles for Nonprofit Organizations"; and OMB Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations" and its implementing regulations. In addition, Borrower will comply with the following CDBG Office requirements.

- (1) Procurement shall be made by one of the following methods and must be approved by the CDBG Office.

- a. Estimate Process

Comparable estimates are obtained from at least two qualified sources. The lowest estimate is selected. This process can only be used for services, supplies or other property costing in the aggregate not more than \$100,000.

- b. Competitive Sealed Bids

Sealed bids are solicited and publicly opened. Selection is based on low price and compliance with Affirmative Action Requirements.

c. Competitive Negotiation:

Selection criteria are defined prior to solicitation of bids. The selection criteria must include price but are not limited to price.

Value engineering, a process where the general contractor is selected before the project design is complete, may be used in conjunction with either a sealed bid or competitive negotiation process. Subcontractors are selected through a competitive process and a fixed maximum price is set prior to the start of construction. Value Engineering is allowed only for very complex and high priced projects.

5. Property Standards. The Borrower shall ensure that the Property is maintained in compliance with 24 CFR Part 92.251. To maintain the Property as attractive, decent and safe living environment, the Borrower shall vigorously and consistently enforce such provisions in a timely manner.
6. Affirmative Marketing. The Borrower shall comply with the City's affirmative marketing procedures and requirements adopted pursuant to 24 CFR Section 92.351 with respect to the HOME Units. These require the Borrower to adopt an affirmative marketing plan which must be (i) approved by the CDBG Office, and (ii) provide for affirmative marketing of the HOME Units in accordance with the approved plan.
7. Other Program Requirements. The Borrower shall carry out its responsibilities hereunder in compliance with all federal laws and regulations described in 24 CFR Part 92 Subpart H, except for the City's responsibilities for environmental review in 24 CFR Section 92.352 and the intergovernmental review process in 24 CFR Section 92.357.
8. Requests for Disbursements of Funds. The Borrower shall not request reimbursement of Loan proceeds until such funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.
9. Records and Reports. The Borrower shall, without charge to the City, maintain such records and shall make such reports to the City related to the Project as the City may reasonably require from time to time during the term of this Agreement. Borrower shall, without charge to the City, make such records available for inspection and copying by the City, and shall make the Property available to the City for inspection, at any time during normal business hours and upon reasonable advance notice from the City to the Borrower of the City's wish to make any such inspection.
10. Enforcement. The Loan Agreements specify certain remedies available to the City for enforcement of this Agreement. If at any time the City believes an event of default has occurred under any of the Loan Agreements, the City may give written notice thereof to the Borrower. The Borrower shall have 30 days following receipt of such notice to cure any such event of default before the City may declare default (which the City may only do if the event of default is not cured or waived) under any of the Loan Agreements and proceed to exercise any of the City's remedies thereunder. Among other remedies, the City may declare the Loan to be immediately due and payable in full and may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation, to obtain injunctive relief, to compel specific performance or to recover monetary damages, together with the costs and expenses of any proceeding for the collection thereof, including reasonable attorney's fees, caused by such violation, or the City may take any other action available to remedy the violation.

Nothing in this Agreement shall be construed to in any way affect or control the City's exercise of its police power. No delay by the City in instituting or prosecuting any remedy shall operate as a waiver of the City's right to do so or to pursue other remedies. Borrower shall not be deemed to be in default if the default is a result of unforeseeable causes beyond Borrower's control and without its fault or negligence, including, but not limited to acts of God, the public enemy or the federal government, fires, floods, epidemics, quarantine restrictions, strikes, embargoes or unusually severe weather or delays of subcontractors due to such causes.

11. Duration of the Agreement. This Agreement shall continue in full force and effect until the Loan is repaid. Notwithstanding the foregoing, the first sentence of Section 4 and Section 7 and the following words in Section 6, "and requirements adopted pursuant to 24 CFR Section 92.351 with respect to the HOME units," shall terminate and be of no further force and effect upon the expiration of the Period of Affordability for the Property. The Period of Affordability shall terminate on the appropriate anniversary of

the date the Borrower completes the acquisition of the property, per the terms and requirements of 24 CFR 92.252 (Rental Housing), based upon the amount of HOME funds the City has invested in the Property. Prepayment of the Loan prior to the expiration of the Period of Affordability shall not relieve the Borrower of the application of Sections 4, 5, 6, and 7 of this Agreement, except as provided in the Land Use Restrictions.

12. Articles of Agreement. The following Articles of Agreement are required to be set forth herein under Section 3.58, Madison General Ordinances. For purposes of this section, the word "contractor" shall mean the Borrower.

ARTICLE I

The contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free- work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the contractor. The contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses of the contract.

ARTICLE II

The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractor state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

The contractor shall send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This article applies only to non-public works contracts.)

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the formate requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by the City of Madison ordinances or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

ARTICLE V

(This article applies only to public works contracts.)

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the contract compliance requirements. The contractor agrees to submit the model affirmative action plan for public works contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 3.23 and 3.58 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This article applies to public works contracts only.)

The contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE, shall be substituted for the term "small business" in this article.)

13. **Non-Discrimination.** For the purposes of this Section, Contractor shall mean Borrower. In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, familial status, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor further

agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.

It will comply with the City of Madison MGO 32.12(13) prohibiting any person receiving City financial assistance for the development, redevelopment, or rehabilitation of a rental housing project to refuse to lease or otherwise make unavailable housing solely because the applicant for the housing is a direct recipient of Federal, State, or local government housing subsidies. This is applicable during the period of the term of City financial assistance.

14. Non-Discrimination on Basis of Disability. The Contractor assures and certifies that it will comply with the provisions of MGO 3.72, "Non-discrimination based on Disability in City facilities and City-Assisted Programs and Activities" and to ensure that any subcontractor who performs any part of this agreement complies with such provisions where applicable. The primary non-discrimination provisions of this ordinance, contained in 3.72(5) through (9), require that:
 - A. No otherwise qualified individuals with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving City assistance.
 - B. Each program or activity receiving City assistance shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities.
 - C. The contractor shall take appropriate steps to ensure effective, accessible communication with applicants for services, beneficiaries and members of the public.
 - D. The contractor shall post notices in an accessible format describing the applicable provision of MGO 3.72.
 - E. The Contractor agrees to comply with the City Affirmative Action Department in its requests regarding compliance with MGO 3.72, including filing an Accessibility Plan.
15. Applicable Laws. Borrower shall at all times comply with and cause the Project to be in compliance with, all federal, state, county and city laws and regulations which are applicable to the Project or applicable to Borrower as recipient of HOME funds for the Project. Borrower shall independently determine which such laws and regulations are applicable to the Project or Borrower, and is not, and shall not, rely upon the City, or the City's officers, officials, employees or agents, in making any such determination. The specific references to particular statutes and regulations referenced in this Agreement mean those which are in effect on the date hereof and do not include any amendments thereto which may be subsequently enacted unless specifically required by the City. A copy of 24 CFR Part 92 as it exists on the date hereof has been made available to the Borrower.
16. Sign/Easements/ CDBG Logo. Borrower shall provide and erect a sign on the Property during any rehab of the Project which credits the City's HOME Program with financing a portion of the Project. Borrower shall not allow any structure (other than paving and signage) to encroach upon any easement across the Property without the prior written consent of the City. Borrower shall credit the City of Madison HOME Program, and will include the CDBG Office logo, in all its documents, publicity newsletters, brochures or site signs regarding the funded activities.
17. No Third Party Rights. Nothing in the Loan Agreement or any other agreement between Borrower and the City, and no act by the Borrower or City, shall be deemed or construed by the Borrower or City or any other person or entity to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture or any association or relationship involving the City.
18. Representations. Borrower represents and warrants to the City as of the date hereof that the Borrower is a Wisconsin nonstock corporation generally exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code, is in good standing under the laws of the State of Wisconsin, and has all requisite power, licenses and authority necessary to conduct its business, including operating the Project, and that the Loan Agreements constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally. The Borrower shall maintain its existence and will not dissolve, assign or otherwise dispose of all or substantially all of its assets, and will

not consolidate with or merge into another business entity or permit one or more business entities to consolidate with or merge into it or suffer, cause or permit any modification of its equity structure without the express written approval of the City.

19. Conflicts of Interest. No one who is an employee, agent, consultant, officer, or elected official or appointed official of the City or Borrower which are receiving HOME funds, and who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This provision shall be in addition to the requirements of Section 3.47 of the Madison General Ordinances.
20. Indemnification. Borrower shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, its officers, officials, agents and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Borrower or its tenants, agents, contractors, subcontractors, invitees or employees in the performance of this Agreement, whether caused by or contributed to by the City or its agenda or employees.

The Borrower agrees that in order to protect itself and the City under the indemnification agreement set forth in the paragraph above, it will at all times during the term of this Agreement, keep in force and effect, comprehensive general liability insurance, including, but not limited to contractual liability, personal injury, bodily injury and property damage, and auto liability insurance coverage, issued by a company or companies authorized to do business in the State of Wisconsin, with liability coverage provided for therein in the amount of \$1,000,000 combined single limits. The coverage afforded shall apply as primary with the City named as additional insured. The insurer shall give thirty (30) days advance written notice of cancellation, non-renewal, or material change during the terms of this agreement. Upon execution of this Agreement, the Borrower shall furnish the City's Risk Manager with a Certificate of Insurance and, upon request, certified copies of the requested insurance policies.

21. Assignment. Borrower's obligations under the Loan Agreements may not be assigned without the prior written consent of the City.
22. Junior Lenders. Borrower shall not create, suffer or permit any mortgage, lien, charge or encumbrance to attach or be recorded or filed against the Property, whether such lien is superior or inferior to the lien of the City, without the City's prior written approval.
23. Living Wage. (Applicable to contracts in excess of \$5,000.) Borrower agrees to pay all employees employed by the Borrower in performance of this Agreement, whether on a full-time or part-time basis, a wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances. The minimum hourly wage as of January 2007 is \$10.58 per hour (\$10.92 as of January 2008) for persons covered by the ordinance. M.G.O. requires the Contractor to post a notice of the minimum living wage rates and the phone number of the City's Affirmative Action Office, and provide a copy of the ordinance to any person employed by the Contractor in the performance of the service contract. For further information on the City's living wage requirements, see <http://www.ci.madison.wi.us/comp/livewage/lw-index.htm>.
24. Due on Sale. Upon the sale, change in use, or other transfer of the Property (except as provided in Section 20 hereof), the Loan shall be immediately due and payable as provided in the Note(s).
25. Limitation on Disbursement. Notwithstanding any other provision contained in any of the Loan Agreements, the City shall be under no obligation to disburse to Borrower more than \$312,599.00 in HOME proceeds.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of _____, 2007

PORCHLIGHT, INC.

Witness: _____

By: _____
Printed Name: _____
Title: _____

Witness: _____

Attest: _____
Printed Name: _____
Title: _____

**CITY OF MADISON
A Municipal Corporation**

Witness

By: _____
David J. Cieslewicz, Mayor

Witness

Attest: _____
City Clerk

Approved as to Form:

Countersigned:

Michael P. May, City Attorney

Dean Brassler, City Comptroller

Countersigned:

Countersigned:

Hickory Hurie, CD Grants Supervisor

Attachment A

BUDGET

Porchlight, Inc. (insert project number)

	Current Request	Requested to Date	Budget Amount
Capital Costs: Acquisition and closing costs for building			\$265,709.00
Developers Fee: Up to 15%			\$46,890.00
TOTAL			\$312,599.00

Borrower certifies that a commitment for title insurance and evidence of insurance have been submitted to the CDBG Office with/or prior to this request for funds, and that a copy of the closing statement will be forwarded to the CDBG Office within two weeks of the closing.

Borrower certifies that all persons paid in whole or part through this contract have been paid in accord with the City of Madison Living Wage requirements.

Signature of Agency Executive Director

Date

CDBG Grants Administrator

Date

Attachment B

**Rental Completion Report
HOME Program
Attached**

Inspection Request

Date: _____

Address _____

Year Build _____

Buyer _____

Contact for inspection:

Name: _____

Phone: _____

Anticipated Occupancy

Date: _____

Inspection Costs: (to be paid by CDBG Office)

	Contract Price	Check Inspections Requested	Actual Cost
Minimum Housing Code	\$130		
Home Inspection & Minimum Housing Code	\$275		
Lead-based Paint Inspection & Stabilization Plan	\$275		
Visual Clearance for lead and/or Min. Housing Code	\$75		
Clearance for lead and/or Min. Housing Code (dust wipes)	\$150		
		TOTAL:	

Agency: _____

Attachment D

CDBG OFFICE REQUIRED
Schedule of Findings and Questioned Costs
For Year Ended _____

Name of Agency _____

Summary of Auditor's Results

1. Was a Single Audit required?

What dollar threshold was used to distinguish between Type A and Type B programs as defined by the Single Audit? (If applicable.)

2. Type of auditor's report issued?

3. Internal control over financial reporting:

a. Were material weakness(s) identified?

b. Were reportable condition(s) identified not considered to be material weaknesses?

c. Was noncompliance material to the financial statements noted?

4. Internal control over major programs:

a. Were material weakness(s) identified?

b. Were reportable conditions(s) identified not considered to be material weaknesses?

5. Was the indirect cost allocation plan reasonable and acceptable per OMB-A122?

6. Were the actual costs reasonable and allocated appropriately per OMB-A122?

7. Were the costs allocated to the CDBG Office contracts based on costs incurred, and are they supported by records and documents?

8. Were any audit findings disclosed that are required to be reported in accordance with Circular A-133, Section .510(a)? (If A-133 Audit conducted, include CFDA No. and amount.)

9. Include an identification of all Federal Revenue Sources and dollar amounts by program. (Include State of WI pass-through funds.)

10. List Any Financial Statement Findings.

11. List Any Federal and State Award Findings and Questioned Costs

12. Does the auditor have substantial doubt as to the auditee's ability to continue as a going concern?

13. Does the audit report identify any additional audit issues related to the Agency's CDBG Office grants/contracts?

14. Does the audit include the schedule of revenues and expenditures by program and revenue source?

15. Does the audit include the schedule of CDBG Office funds expended by program?

16. Does the audit include the schedule of real property assets and the debt recorded against each property?

17. Was a Management Letter or other document conveying audit comments issued as a result of this audit?

Yes No

\$ _____

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Yes No (If Yes, describe.)

Name and Signature of Partner _____
Date of Report _____