

## HOMELESS ASSISTANCE LOAN AGREEMENT (PORCHLIGHT)

This Homeless Assistance Loan Agreement (the "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 201008, by and between Porchlight, Inc., a Wisconsin non-profit corporation ("Porchlight"), its permitted successors and assigns, and the Community Development Authority of the City of Madison, a Wisconsin redevelopment authority (the "CDA").

### WITNESSETH:

**WHEREAS**, the CDA was designated as the local redevelopment authority for the disposition of the Truman Olson U.S. Army Reserve Center ("Army Center") in the City of Madison; and

**WHEREAS**, pursuant to federal regulation, the CDA advertised the availability of the Army Center property and received a response from Porchlight to develop the property into supportive housing for formerly homeless persons with chronic mental illnesses; and

**WHEREAS**, the City of Madison, Wisconsin (the "City") intends for the Army Center property to be used for certain public infrastructure improvements and for economic development projects; and

**WHEREAS**, the CDA requested that the City provide funds and lands ~~has offered Porchlight a loan~~ to assist Porchlight to create supportive housing upon property ~~acquire lands~~ other than the Army Center property ~~upon which Porchlight will construct supportive housing~~; and

**WHEREAS**, Porchlight wishes to enter into this Agreement for the purpose of receiving loan funds and lands upon which it will construct supportive housing in lieu of the Army site; and

**WHEREAS**, it is contemplated that the City, on behalf of the CDA, will assist Porchlight's housing project by contributing land for the project and making a zero interest forgivable loan to Porchlight in an amount up to \$210,000; and

**WHEREAS**, this Agreement is intended to provide for certain duties and responsibilities of the CDA and Porchlight for design, zoning, development, funding and construction of supportive housing in the City of Madison.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth hereinafter and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. Loan Purpose. This Agreement is for the purpose of providing assistance from the CDA to Porchlight in the form of a zero interest, forgivable loan in an the amount of up to Two Hundred Ten \_\_\_\_\_ Thousand Dollars (\$210,000) (the "Loan") to finance Porchlight's acquisition and remediation of the vacant lands described in Exhibit A,

which is attached hereto and incorporated by reference (the "Property"). Porchlight shall develop the Property into approximately thirty-eight (38) housing units with supportive services for homeless persons, as such persons are defined by the McKinney-Vento Act, at 42 USC 11302 (the "Project"). The total project cost is estimated at \$ \_\_\_\_\_. The Loan shall be repaid in accordance with the terms of the Note and Section 22 herein.

2. Conditions Precedent to Loan. The Loan is subject to the fulfillment, or waiver at the option of the CDA, in its sole discretion, of each and every one of the following terms, conditions and covenants prior to Loan closing:

a. The City, as seller, and Porchlight, as buyer, shall have entered into a binding Purchase Agreement for the Property and funds shall have been appropriated by the City's Common Council for the CDA's Loan to Porchlight for the acquisition of such Property;

b. The deed from the City shall contain a reversionary interest by which the Property shall automatically revert to the City if Porchlight does not complete construction of the Project on or before December 31, 2015~~January 1, 2012~~. The Project shall be deemed completed if a certificate of occupancy has been issued;

c. Porchlight shall have executed a Purchase Agreement with the City, a Mortgage Note (the "Note") secured by a real estate mortgage (the "Mortgage") on the Property for the benefit of the CDA. The Mortgage shall be recorded in the office of the Dane County Register of Deeds at Porchlight's expense. The lien of the Mortgage shall be subject to and subordinate in all respects to the lien of a first mortgage in favor of Porchlight's first mortgagee in ~~a the~~ maximum principal amount as approved by the City of \$ \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as well as to restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not due as of the date of the Mortgage, the rights of tenants in possession, and other encumbrances acceptable to the CDA;

d. Porchlight shall comply with the provisions of Exhibit B hereto and ensure that the Project will be accessible to persons with physical disabilities, and that the Project complies with Madison General Ordinance Sections 39.05, applicable Wisconsin Administrative Code provisions and the Americans with Disabilities Act, where applicable;

e. Porchlight shall submit evidence that a property insurance policy of the proper type and amount of coverage to protect the CDA's loan participation has been obtained. Porchlight shall provide a Mortgage Holder's Endorsement in favor of the CDA. Porchlight agrees to maintain such coverage during the term of the Loan and to submit, annually, insurance certificates that indicate insurance requirements are met and that premiums are fully paid;

f. Porchlight shall furnish and deliver to the CDA, at Porchlight's sole cost and expense, for examination at least fifteen (15) days before closing, an ALTA commitment for marketable title insurance on the Property issued by a responsible title company licensed by the State of Wisconsin, committing said title insurance company to

issue insurance ~~for~~ for the CDA's mortgage interest in the Property by an owner's standard form ALTA policy in the amount of \$210,000, showing all liens, encumbrances and other matters of record, together with "gap" coverage and such other endorsements as the CDA may reasonably require;

g. The City Attorney of Madison, Wisconsin has executed the form of legal opinion attached hereto as Exhibit C;

h. Porchlight shall have received all applicable zoning, land use and urban design approvals. ~~Porchlight shall be solely responsible for the cost of such approvals;~~

i. Porchlight shall have received a financing commitment from a financial institution providing for construction financing of the Project, and shall provide a copy of such commitment to the City. Porchlight shall provide for all funds which may be necessary to complete the Project; ~~and~~

~~j. The Department of Housing and Urban Development and Department of Defense shall have approved the CDA's redevelopment plan and homeless assistance submission.~~

3. Subordination. The CDA agrees to subordinate its mortgage lien to a mortgage lien in ~~an~~ the amount to be approved by the City to Porchlight's first mortgagee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to \_\_\_\_\_ (the "First Mortgage"). The CDA further agrees to subordinate its lien to replacement financing of this mortgage in an aggregate amount not to exceed the outstanding principal balance of such existing indebtedness.

4. Relatedness of Other Loan Documents. The terms of the Note and Mortgage are hereby incorporated herein by reference, and noncompliance with any term or condition of any of them shall be deemed a default hereunder.

5. Loss or Damage. If there is any unpaid principal or interest remaining on the Loan when all or any of the Project is destroyed or damaged, and unless Porchlight exercises its option to prepay the entire amount owing on the Note, then the following subsections shall apply:

a. Porchlight shall proceed promptly to replace, repair, rebuild and restore the Project to substantially the same condition as existed before the event causing the damage or destruction, and Porchlight will pay all costs thereof and be entitled to retain all net proceeds of the insurance claim. If the net proceeds are not sufficient to pay such costs in full, Porchlight will nonetheless complete it and will pay that portion of the cost in excess of the amount of the net proceeds.

b. Porchlight shall not, by reason of the payment of any costs of repair, rebuilding, replacement or restoration, be entitled to any reimbursement from the CDA or any abatement or diminution of the amounts payable under the Note and Mortgage or other sums payable by Porchlight under the Agreement. Any balance of net proceeds remaining after payment of all costs of any repair, rebuilding, replacement or restoration and any amounts required to be paid pursuant to the First Mortgage, shall be paid to the

CDA against any unpaid principal or interest on the Note or, if there are no outstanding sums due and owing, to Porchlight.

6. Indemnification. Porchlight shall be liable to and hereby agrees to indemnify, defend and hold harmless the CDA, its 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 CDA, its officials, agents and employees for damages because of bodily injury or death, 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 Porchlight or its tenants, agents, contractors, subcontractors, invitees or employees, whether caused by or contributed to by the CDA or its agents or employees. This Section 6 shall survive the termination of this Agreement.

7. Events of Default. Any one or more of the following events is an Event of Default under this Agreement:

- a. Failure to pay any amount which shall have become due under the Note;
- b. Any representation of the Porchlight which shall prove to have been false in any material respect;
- c. Non-performance by Porchlight of any covenant, agreement, term or condition in this Agreement or the Mortgage and any amendments thereto and Porchlight has failed to cure such default within the required time period, if any, as provided herein or in the Mortgage;
- d. The sale, lease or other transfer of any kind or nature of the Property, or any part thereof, except as to leases of residential units to eligible tenants;
- e. The Property is no longer used to provide housing units with supportive services for homeless persons as defined by Section 103 of the Stewart B. McKinney Homeless Assistance Act, 42 USC Section 11302; or
- f. Porchlight becomes insolvent or the subject of state insolvency proceedings, fails generally to pay its debts as they become due or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property or a receiver trustee, custodian or other similar official is appointed for, or takes possession of the Property.

8. Remedies. Upon the occurrence of an Event of Default, the CDA shall, by written notice to Porchlight, declare the Loan and Note to be immediately due and payable and/or may pursue any available remedy by suit at law or in equity to insure or realize the payment of the principal under the Note, including such remedies as are provided in the Mortgage.

No remedy conferred upon or reserved to the CDA hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but

any such right and power may be exercised from time to time and as often as may be deemed expedient.

In the event the Porchlight should default under any of the provisions of the Agreement and the CDA should employ or assign attorneys or incur other expenses for the collection of the Loan or the enforcement of performance of any obligation or covenant on the part of Porchlight hereunder, Porchlight will on demand pay to the CDA the reasonable costs, charges or fees of such attorneys and such other expenses so incurred.

In the event any term or condition contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

9. Workforce Utilization. This Section 9 is inapplicable if Porchlight employs fewer than fifteen (15) employees. Porchlight agrees that, within thirty (30) days after the effective date of this Agreement, Porchlight will provide to the City of Madison Department of Civil Rights certain workforce utilization statistics, using a form to be furnished by the City.

If the Agreement is still in effect, or if the CDA enters into a new agreement with Porchlight, within one year after the date on which the form was required to be provided, Porchlight will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Department of Civil Rights no later than one year after the date on which the first form was required to be provided.

Porchlight further agrees that, for at least twelve (12) months after the effective date of this Agreement, it will notify the City of Madison Department of Civil Rights of each of its job openings at facilities in Dane County for which applicants not already employees of Porchlight are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. Porchlight agrees to interview and consider candidates referred by the Department of Civil Rights if the candidate meets the minimum qualification standards established by Porchlight, and if the referral is timely. A referral is timely if it is received by Porchlight on or before the date stated in the notice.

10. Affirmative Action. This Section 10 is inapplicable if Porchlight employs fewer than fifteen (15) employees or does less than Twenty-Five Thousand Dollars (\$25,000) aggregate annual business with the CDA in any calendar year during which this Agreement is in effect.

## **ARTICLES OF AGREEMENT**

### **ARTICLE I**

Porchlight 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 Porchlight. Porchlight 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 in this contract.

ARTICLE II

Porchlight shall in all solicitations or advertisements for employees placed by or on behalf of the contractors 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

Porchlight shall send to each labor union or representative of 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 to non-public works contracts.)

Porchlight 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 CFR 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 format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 CFR 51400, November 3, 1978, including appendices required by City of Madison ordinance 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.)

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

ARTICLE VI

Porchlight will maintain records as required by Section 3.58(9)(f) of the Madison General Ordinances and will provide the City's Affirmative Action Officer with access to such records and to persons who have relevant and necessary information, as provided in Section 3.58(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 Porchlight'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:

- A. Cancel, terminate or suspend this contract in whole or in part.
  
- B. Declare Porchlight ineligible for further City contracts until the Affirmative Action requirements are met.

- C. 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.)

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

#### ARTICLE IX

Porchlight 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.)

11. Nondiscrimination. In the performance of its obligations hereunder, Porchlight agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, 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. Porchlight further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex or national origin.

~~12. Prevailing Wages. Porchlight shall ensure all laborers performing work on the Project are paid the wage rates established by Sec. 4.23, Madison General Ordinances, and its referenced sections, and shall require in its contracts and subcontracts for work on the Project, adherence by those contractors, subcontractors and agents to the wage rates established by Section 4.23 and its referenced sections. Porchlight and its contractors, subcontractors and agents shall also adhere to the requirements of Madison General Ordinances Sec. 23.01(1)(d) "Payroll and Records", Sec. 23.01(1)(j) "Evidence of Compliance by Contractor", and Sec. 23.01(1)(k) "Evidence of Compliance by Agent and Subcontractor" with the exception that the reference to "City Engineer" and "Department of Public Works" shall be to the CDA.~~

~~13.12. Living Wage. Porchlight agrees to pay all employees employed by Porchlight in the performance of this Agreement, whether on a full-time or a part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General ordinances.~~

~~14.13. Records and Reports. Porchlight shall, without charge to the CDA, maintain such records and shall make such reports to the CDA related to the Project as the CDA may reasonably require from time to time during the term of this Agreement. Porchlight shall, without charge to the CDA, make such records available for inspection and copying by the CDA, and shall make the Project available to the CDA for inspection, at any time during normal business hours and upon reasonable advance notice from the CDA to Porchlight.~~

~~15~~14. Notices. All notices under this Agreement shall be sufficiently given and shall be deemed given when personally delivered or when mailed by first class mail postage prepaid to the proper addresses indicated below. The CDA and Porchlight may, by written notice given by each to the other, designate any address to which notices or other communications to them shall be sent when required as contemplated herein:

TO THE CDA:                      Community Development Authority  
   Attention: Executive Director  
   215 Martin Luther King, Jr. Blvd., Room LL110  
   P.O. Box 2983  
   Madison, WI 53701-2983

COPY TO:                              The City of Madison, Wisconsin  
   Attn: City Attorney  
   210 Martin Luther King Jr. Blvd., Room 401  
   Madison, WI 53703

TO BORROWER:                      Porchlight, Inc.  
   Attention: Executive Director  
   301 N. Brooks Street  
   Madison, WI 53703

~~16~~15. No Assignment. This Agreement may not be assigned by Porchlight, in whole or in part, without the express prior written approval of the CDA.

~~17~~16. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision.

~~18~~17. Amendments, Changes and Modifications. Except as otherwise provided herein, this Agreement may not be effectively amended, changed, modified, altered or terminated by the CDA or Porchlight except by written amendment approved and executed by the CDA and Porchlight.

~~19~~18. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

~~20~~19. Wisconsin Law. This Agreement shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin.

~~21~~20. Compliance with Laws and Agreements. Porchlight will comply with, and will cause the Project to be in compliance with, all applicable laws, ordinances, permits, regulations, orders, restrictive covenants or agreements to which Porchlight or the Project are subject.

~~22~~ 21. Mortgage Satisfaction. The Note shall be cancelled and the CDA shall execute a Satisfaction of Mortgage upon the earlier of: (a) repayment of the Loan in full and, a reversion of the Property to the City, or (b) completion of the Project on or before ~~December 31, 2015~~ January



1, 2012. This Agreement shall terminate upon the execution by the CDA of its satisfaction of mortgage.

2322. Project Contingency. If in the event neither the Property nor an equivalent parcel of real estate has not been acquired by Porchlight at the time the CDA acquires the Army Center, then Porchlight will be accommodated on the Army Center site subject to all regulatory approvals, including but not limited to zoning, land use and other adopted policies.

The parties hereto have caused this Loan Agreement to be duly executed as of the date written above.

**PORCHLIGHT, INC.**

By: \_\_\_\_\_  
Steven J. Schooler, Executive Director

By: \_\_\_\_\_  
Peter Mortenson ~~Chris Laurent~~, Chair

**COMMUNITY DEVELOPMENT  
AUTHORITY OF THE CITY OF  
MADISON**  
a Wisconsin redevelopment authority

By: \_\_\_\_\_  
Gregg Shimanski ~~Stuart Levitan~~, Chair |

By: \_\_\_\_\_  
Mark A. Olinger, Executive Director

**EXHIBIT A**

**Legal Description of Property**

**Address of Property**

4002 Nakoosa Trail, City of Madison, Wisconsin

| Parcel No. 251-0810-334-0087-1\_\_\_\_\_

**EXHIBIT B**  
Section 39.05 Assurances

**EXHIBIT C**  
Form of Legal Opinion