

**HOMELESS ASSISTANCE LOAN AGREEMENT
(GOODWILL INDUSTRIES)**

This Homeless Assistance Loan Agreement (the "Agreement") is entered into as of the ___ day of _____, 2008, by and between Goodwill Industries of South Central Wisconsin, Inc., a Wisconsin non-profit corporation (the "Goodwill"), 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 ("Truman Olson") in the City of Madison; and

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

WHEREAS, the City of Madison intends for the Truman Olson property to be used for certain public infrastructure improvements and for economic development projects; and

WHEREAS, the CDA has offered Goodwill a loan to assist Goodwill to construct supportive housing on a site within the City of Madison other than the Truman Olson property; and

WHEREAS, Goodwill wishes to enter into this Agreement for the purpose of receiving loan funds to assist in the acquisition and construction of the real property described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, it is contemplated that the CDA will assist Goodwill's housing project by providing a zero interest loan to Goodwill in the amount of \$_____.

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 Goodwill in the form of a zero interest loan in the amount of _____ Thousand Dollars (\$_____) (the "Loan") to partially finance Goodwill's redevelopment of the Property into eight (8) units of permanent supportive housing for persons with mental illnesses who were formerly homeless (the "Project"). The total project cost is estimated at \$_____. The Loan shall be repayable in accordance with the Note.

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 CDA and the U.S. Department of Defense have entered into a binding Purchase Agreement for the Truman Olson property and funds have been authorized for the CDA's acquisition of such property;

b. The Project will be constructed to conform to the application, Project budget and plans submitted to the CDA by Goodwill, dated _____, which are incorporated by reference herein and made a part of this Agreement;

c. Goodwill shall have executed 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 Goodwill'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 _____ in the maximum principal amount 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. Goodwill 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. Goodwill 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. Goodwill shall provide a Mortgage Holder's Endorsement in favor of the CDA. Goodwill 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. Goodwill shall furnish and deliver to the CDA, at Goodwill'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 the Property by an owner's standard form ALTA policy in the amount of \$ _____, 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. Goodwill shall have received all zoning, land use, urban design and construction permitting approvals. Goodwill shall be solely responsible for the cost of such approvals;

i. Goodwill 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 CDA. Goodwill shall provide for all funds which may be necessary to complete the Project;

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

k. The Common Council of the City of Madison has authorized the funding of the Loan.

3. Subordination. The CDA agrees to subordinate its mortgage lien to a mortgage lien in the amount 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 Goodwill exercises its option to prepay the entire amount owing on the Note, then the following subsections shall apply:

a. Goodwill 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 Goodwill 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, Goodwill will nonetheless complete it and will pay that portion of the cost in excess of the amount of the net proceeds.

b. Goodwill 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 Goodwill 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 Goodwill.

6. Indemnification. Goodwill 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 Goodwill or its tenants, agents, contractors, subcontractors, invitees or employees, whether caused by or contributed to by the CDA or its agents or employees.

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

b. Any representation of Goodwill which shall prove to have been false in any material respect;

c. Non-performance by Goodwill of any covenant, agreement, term or condition in this Agreement or the Mortgage and any amendments thereto and Goodwill 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 for persons with mental illnesses; or

f. Goodwill 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 Goodwill, 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 Goodwill 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 Goodwill hereunder, the Goodwill 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 Goodwill employs fewer than fifteen (15) employees. Goodwill agrees that, within thirty (30) days after the effective date of this Agreement, Goodwill 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 Goodwill, within one year after the date on which the form was required to be provided, Goodwill 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.

Goodwill 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 Goodwill are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. Goodwill agrees to interview and consider candidates referred by the Department of Civil Rights if the candidate meets the minimum qualification standards established by Goodwill, and if the referral is timely. A referral is timely if it is received by Goodwill on or before the date stated in the notice.

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

ARTICLES OF AGREEMENT

ARTICLE I

Goodwill 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 Goodwill. Goodwill 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

Goodwill 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

Goodwill 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.)

Goodwill 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.)

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

ARTICLE VI

Goodwill 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 Goodwill'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 Goodwill 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.)

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

ARTICLE IX

Goodwill 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, Goodwill 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. Goodwill 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. Goodwill shall pay its employees performing labor on the Project 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. Goodwill 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. Living Wage. Goodwill agrees to pay all employees employed by Goodwill 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. Records and Reports. Goodwill 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. Goodwill 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 Goodwill.

15. 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 Goodwill 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 GOODWILL:

Goodwill Industries of South Central Wisconsin
Attention: Executive Director
1307 Mendota Street
Madison, WI 53704

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

17. 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. 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 Goodwill except by written amendment approved and executed by the CDA and Goodwill.

19. 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. 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. Compliance with Laws. Goodwill shall comply with, and will cause the Project to be in compliance with, all applicable laws, ordinances, permits, orders, regulations or agreements to which Goodwill and the Project are subject.

22. Loan Satisfaction. The Note shall be cancelled and the CDA shall execute a Mortgage satisfaction upon repayment of the Loan in full or completion of the Project on or before January 1, 2013.

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

**GOODWILL INDUSTRIES OF SOUTH
CENTRAL WISCONSIN, INC.**

By: _____
_____, Executive Director

By: _____
_____, Chair

Draft

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

By: _____
Stuart Levitan, Chair

By: _____
Mark A. Olinger, Executive Director

The Agreement was authorized by Resolution No. _____, adopted by the Community Development Authority on _____, 2008.

EXHIBIT A

Legal Description of Property

Address of Property

Parcel No. _____

EXHIBIT B
Section 39.05 Assurances

draft

EXHIBIT C
Form of Legal Opinion

Draft