



SERVICE RELEASE ORDER

Vendor Address
Vendor Address Number 163009
HOUSTON DMA HOUSING II, LLC
4101 PARKSTONE HEIGHTS DRIVE, SUITE 310
AUSTIN TX 78746
USA

Mail Invoice to
COH HOUSING & COMMUNITY DEV
FINANCIAL SERVICES SEC, ACCT PAY
PO Box 1562
HOUSTON TX 77251-1562

Information
SRO Number/Date 4500371647-0 / 06/22/2022
CoH Vendor Number 163009
Page 1 of 2
Buyer's Name Teresa Moore 461
Buyer's Telephone Number 832.394.6272
Buyer's Fax Number
Buyer's E-mail Address Teresa.moore@houstontx.gov

**CONFIRM RECEIPT AND ACCEPTANCE OF PURCHASE ORDER
TO BUYER'S E-MAIL ADDRESS**

Shipping Address HOUSING & COMMUNITY DEVELOPMENT
PROCUREMENT SERVICES
2100 TRAVIS, 9TH FLOOR
HOUSTON TX 77002
USA

Terms of payment : Pay net 30 w/o deduction Currency USD

Shipping Terms FOB(Free on board) /DESTINATION

Our reference: 2022-0534

Your person responsible: JOELLEN SMITH

Your reference: 2022-0534

Item	Quantity	UM	Material # / Description	Unit Cost	Extended Cost
10	1.00	AU	99884 REAL ESTATE (INCL. B MFR-ELLA GRAND DR17 Release Order against contract 4600017316 Item 00010	12,000,000.00 / AU	12,000,000.00
	Gross Price		USD 1 AU	1.000	12,000,000.00
			12,000,000.00		
			*** Item partially delivered *** Expected value of unplanned services: 12,000,000.00		
			Delivery Date: 12/31/2022		



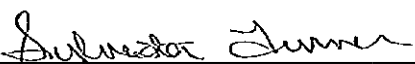


CITY OF HOUSTON
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND
DELIVERY CORRESPONDENCE

SERVICE RELEASE ORDER

PO number/date 4500371647 -0 / 06/22/2022 Page 2 of 2

Total ****	USD 12,000,000.00
2022-0534 ORD PASSED 7/6/2022 EXECUTED BY MAYOR 11/9/2022 CS 11/14/2022	
<p>NOTICE -- This is a contract release order against the contract referenced herein. The terms and conditions in the referenced contract are hereby incorporated into this contract release order as if set forth in full text. All work performed pursuant to this contract release order shall be performed in strict accordance with the referenced contract's statement of work/scope of services.</p>	

<p>I hereby certify a certificate of the necessity of this expenditure is on file in this department.</p>	<p>I hereby certify that the expenditure for the above goods has been duly authorized and appropriated and that sufficient funds are available to liquidate same.</p>	
		
Mayor	Chief Procurement Officer	Controller

2022-0534
4600017316

LOAN AGREEMENT

Dated _____, 2022

By and between

CITY OF HOUSTON, TEXAS,
A home-rule city organized under the laws of the State of Texas

And

HOUSTON DMA HOUSING II, LLC
A Texas limited Liability Company

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LOAN AGREEMENT (CDBG-DR 17 Transaction)

The parties to this Loan Agreement (this “Agreement”) are the **CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas (“City”), and **HOUSTON DMA HOUSING II, LLC**, a Texas limited liability company (“Borrower”).

Unless the context otherwise requires, the initial capitalized words shall have the meanings ascribed to them in **SCHEDULE A** attached to this Agreement if they are not otherwise defined in the main body of this Agreement.

Borrower and City hereby agree as follows:

SECTION ONE
BACKGROUND

A. Borrower has requested and this Agreement provides for a loan to be made from the City to the Borrower in the maximum principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00) (“Loan Amount”) (“City Loan” or the “City’s Loan”). The City’s Loan will provide funds for the rehabilitation, reconstruction, acquisition and/or construction of replacement affordable housing to replace affordable housing that was damaged or destroyed by Hurricane Harvey, and will serve a Low and Moderate Income (“LMI”) benefit by providing or improving residential structures to be occupied by households qualifying for LMI (“LMI Persons” or “City’s LMI Persons”).

B. Funding for the City Loan is being provided to the City pursuant to 2017 Community Development Block Grant (“CDBG”) Disaster Recovery program funds (“CDBG-DR17 Program”) awarded by the United States Department of Housing and Urban Development (“HUD”) through the Texas General Land Office (“GLO”) under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56) and the Further Additional Supplemental Appropriations for Disaster Relief

Requirements Act, 2018 (Public Law 115-23), and the requirements published by HUD under 83 Fed. Reg. 5844 and 83 Fed. Reg. 40314, and is subject to the terms and conditions of that certain Contract Numbered 21-134-000-C788 ("2021 Subrecipient Agreement"), as may be amended from time to time ("GLO Contract") between GLO and the City. Pursuant to the GLO Contract, the provisions of that certain City of Houston Local Action Plan – Hurricane Harvey Housing Recovery passed and approved by City Council of the City of Houston ("City Council") by Ordinance No. 2018-518 on June 27, 2018, as amended by that certain State of Texas Plan for Disaster Recovery: Hurricane Harvey Round 1, as amended from time to time (as so amended, the "Action Plan"), Federal regulations, as published in 24 C.F.R. Part 570 ("CDBG Regulations"), the State of Texas CDBG Housing Rules, as published in 10 TAC Chapter 60; the City's Harvey Multifamily Program Guidelines, as amended from time to time, and other related administrative rules and regulations issued by the Federal Government or State of Texas that are applicable to rental activities funded under the CDBG-DR17 Program ("Other Requirements") are hereby included or incorporated in this Agreement and sub-agreements, as applicable. Furthermore, Borrower has been notified that the information related to the development, its operations and its residents are covered under Chapter 552, Texas Government Code, the Texas Public Information Act, unless a valid exception exists, and Chapter 2306 of the Texas Government Code.

C. The term of the City Loan and this Agreement shall be forty-two (42) years, commencing on the Closing Date. The City Loan term shall include the initial twenty-four (24) months until Project Completion and mature on the last day of the forty (40)-year Affordability Period (as same may be extended) (the "Term"). Until Project Completion and so long as Borrower is not in default, Borrower shall have no obligation to make interest payments on the City Loan. Following Project Completion the outstanding principal balance of the Note shall

accrue interest at the rate of one percent (1%) simple interest per annum, calculated daily using a 360-day basis for the actual number of days that the principal is outstanding. Borrower shall pay an annual installment equal to the lesser of (i) one percent (1%) annually on the outstanding balance of the City Loan plus accrued unpaid interest, if any, or (ii) fifty percent (50%) of Net Cash Flow. The annual interest payment or non-payment of such interest shall be accompanied by evidence acceptable to the Director documenting cash flow or absence of Net Cash Flow. Unpaid interest will accrue and will be payable from future Net Cash Flow. Net Cash Flow is defined as follows:

Net Cash Flow shall mean all income and revenues actually received by Borrower from the lease of the Project Units and other improvements, and all other income and revenues actually received by Borrower in connection with the Project, excluding and deducting therefrom all (1) Operating Expenses, including any debt service payments related to the Senior Loan or Subordinate Loan (but not any other subordinate loans); (2) security, pet or cleaning deposits, if any; (3) payments from the Replacement Reserve or from Operating Reserves; (4) payments or reimbursements from insurers or other third parties and used or to be used for restoration, repair or remodeling of any of the Project Units or other improvements; (5) capital contributions, grants, proceeds of any permitted sale, transfer, exchange, refinancing or other disposition or encumbrance of all or a portion of the Project, or proceeds from the sale or other disposition of Federal or State Historic Tax Credits; (6) condemnation proceeds and awards in place of them; (7) tax reduction or abatement proceeds (8) City Loan proceeds, Subordinate Loan proceeds or other subordinate loan proceeds; (9) deposits made to operating reserves and to the replacement operating reserves; (10) payments of the deferred developer fee; (11) costs of residential services; (12) social services fees, to the extent such fees are authorized under the Approved Final Operating

Budget; (13) any tax credit adjustments, any asset management fees due to either the Tax Credit Investor or a limited partner to the extent such fee is authorized under the Approved Final Operating Budget and loans from a Tax Credit Investor or member of Borrower related to the Project (to the extent that repayment of such loan (a) is not secured by the Project and (b) is made for the purposes of covering assumed tax liability, tax credit shortfalls and operating deficits under the Approved Final Operating Budget for the applicable year and not for the purposes of facilitating distributions to the members of the Borrower).

D. Provided that no Default then exists beyond all applicable notice and cure periods and subject to the Director's consent and the conditions of this Section, Borrower may, at its option, extend the Term of the City Loan for a maximum of three (3) successive renewal periods of five (5) years each (the "Renewal Periods") by written notice to the City of Borrower's desire to renew the City Loan (the "Renewal Notice") which Renewal Notice shall be given no earlier than ninety (90) days prior to the expiration of the then current Term and no later than thirty (30) days prior to the expiration of the then current Term (as it may have previously been extended). For each Renewal Period, Borrower will pay the City a fee equal to one percent (1.0%) of the then outstanding balance of the City Loan which is a good faith estimate of the additional legal fees, monitoring costs and other expenses to be incurred by the City as a result of such extension and which sum must be paid simultaneously with the giving of the Renewal Notice. The extension option may only be exercised as to one Renewal Period at a time. (For clarity purposes, the second extension option may be exercised no earlier than ninety (90) days prior to the expiration of the first Renewal Period and will not be available if the first extension option is not exercised and the third extension option may be exercised no earlier than ninety (90) days prior to the expiration of the second Renewal Period and will not be available if the first and second extension options are

not exercised.) As a condition to each such extension, the Affordability Period must be extended to cover the applicable Renewal Period, and the parties shall execute a written extension agreement and any other documentation which may be required to extend the City Loan, the Affordability Period and the Restrictive Covenants for the Renewal Period in form and substance reasonably acceptable to the City and Borrower. In addition, as a further condition to the renewal, (i) Borrower shall provide the City with a title company endorsement to the City's loan policy of title insurance for such extension under Texas Title Insurance Procedural Rule P.9.b.3 (or the equivalent), and (ii) the Project must pass the inspection of the City to ensure compliance with the Minimum Property Standards as the same are revised from time to time and if necessary, the Borrower shall additionally make all necessary repairs to bring the Project into compliance. If Borrower requests an extension, the City may also, as a condition of renewal, require that the Replacement Reserve Account(s) be collaterally assigned to the City, subject, however, to Senior Lender's interest in the Replacement Reserve Account(s) under the Senior Loan Documents, as applicable.

E. No payment of principal shall be payable under the City Loan except in the event of Borrower's or Owner's Default of its obligations or representations and warranties that is continuing beyond the expiration of all applicable notice and cure periods under (a) this Agreement, (b) the terms of the Note or any security or other Loan Documents securing or evidencing the City Loan, and/or (c) the City's Restrictive Covenants; provided, however, the Director, in his or her sole discretion, may waive in full or in part any requirement of this paragraph.. In the event a Default has occurred and is continuing beyond the expiration of all applicable notice and cure periods and the Director elects, in accordance with the terms of the Loan Documents, to accelerate payment of the Note and declare that all sums under the City Loan are

immediately due and payable, the principal balance of the City Loan together with accrued but unpaid interest thereon shall become immediately due and payable at the Director's option.

F. Borrower's obligations to the City under this Agreement, including, but not limited to repayment of the City's Loan as evidenced by the Note, will be secured by, among other things, the Deed of Trust on the Project. In furtherance of the foregoing, Borrower shall execute and deliver any instruments, documents and/or agreements necessary to create or perfect the security interests referenced hereunder. Borrower shall use the proceeds of the City Loan for the payment of the costs to acquire and rehabilitate, reconstruct, construct or replace rental housing to be known as **Ella Grand**, located at 2077 South Gessner Road in Houston, Harris County, Texas 77063. The Land on which the Project is located is described in EXHIBIT A attached to this Agreement. The purpose of the Project is to house the City's LMI Persons in compliance with the affordability agreements set forth in this Agreement and in the Restrictive Covenants.

G. Guarantor will sign a Construction Completion Guaranty in the form set forth in the Attachments to this Agreement ("Construction Completion Guaranty") of Borrower's requirements under this Agreement and the Construction Contract.

H. Reserved.

I. The City is obligated to comply with certain requirements with respect to reporting to GLO about the use of the Loan Proceeds and the operations and maintenance of the Project, among other matters, and this Agreement contains provisions for the Borrower to submit information to the Director on various aspects of the Project. Borrower shall submit this information to the Director on the forms from time to time provided and required by the Director to be used by the Borrower ("Monitoring Forms"), the initial form of which is attached as APPENDIX 5 hereto.

J. The City Loan is issued subject to the conditions and terms of this Agreement.

K. Borrower shall comply and shall cause its contractors to comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") programs as set out in Chapter 15, Article V of the City's Code of Ordinances. Borrower shall make Good Faith Efforts as described by the City's Office of Business Opportunity ("OBO") policy attached hereto as APPENDIX 9, to award subcontracts or supply agreements in at least thirty-four percent (34%) of the Loan Amount to MWSBEs. Borrower acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the OBO and shall comply with them.

Borrower shall ensure and shall cause its contractors to ensure that all subcontracts with MWSBE subcontractors and suppliers contain the following terms:

1. [Name of MWSBE subcontractor] shall not delegate or subcontract more than fifty percent (50%) of the work under this Subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director.

2. [Name of MWSBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (a) inspections of all places where work is to be undertaken in connection with this Subcontract, and (b) audits of the books and records of [Name of MWSBE subcontractor]. [Name of MWSBE subcontractor] shall keep such books and records available for such purpose for at least four (4) years after the completion of its performance under this Subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3. Within five (5) business days of execution of this Subcontract, the prime contractor and [Name of MWSBE subcontractor] shall designate in writing to the Director an agent

for receiving any notice required or permitted to be given pursuant to Chapter 15 of the City's Code of Ordinances, together with the mailing address and telephone number of such agent.

4. Any controversy between the parties involving the construction or application of any terms, covenants, or conditions of this Subcontract may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution by neutrals, in accordance with the requirements of Chapter 15 of the City's Code of Ordinances.

L. Borrower agrees to abide by the conflict of interest provisions at 24 C.F.R. § 570.611, 2 C.F.R. § 200.317 and 2 C.F.R. § 200.318 and furnish conflict of interest disclosure forms if so required by the Director.

1. Borrower shall implement all noise and flood hazard and other mitigation action required or at the City's sole discretion, recommended as a result of the environmental review conducted pursuant to 24 C.F.R. Part 58 (the "Environmental Review"), including any required conformance with HUD elevation requirements (e.g., elevating or otherwise protecting ground level parking and storage areas) or flood-control measures (collectively, "Environmental Mitigation"). Borrower shall also comply with all applicable insurance and survey requirements as set forth in Section Three, Paragraph 3.13 and Section Six, Paragraph 6.26.

M. If the Loan Proceeds do not cover all of the costs of the Project, Borrower shall have obtained at the time of Closing a firm commitment for the funding of the remaining acquisition costs (if applicable) and the construction costs to repair, renovate, construct and/or reconstruct the Project (collectively, together with the Senior Loan and the Subordinate Loan, the "Other Financings"), all of which combined with the Loan Proceeds, total at least the amount required by the Approved Final Project Budget ("Final Project Budget") in form and content approved by the Director and attached hereto in the Exhibits to this Agreement. In any case,

Borrower shall be responsible for funding or obtaining funding for any costs or expenses of the Work, other Project costs under the Final Project Budget or otherwise payable under this Agreement to the extent not covered by the Loan Proceeds.

N. It is the policy of the City to ensure that construction work it finances protects workers on those projects by making sure they are safe, are compensated in accordance with Applicable Law, and have access to pathways for sustainable careers in the construction industry. All contractors who work on the Project are required to implement the workforce protection measures at **APPENDIX 15**.

O. The replacement reserve ("Replacement Reserve") shall be no less than Three Hundred and No/100 Dollars (\$300.00) per unit annually, increasing by three percent (3%) annually, pursuant to the terms of the Senior Loan Documents, to the extent that such Replacement Reserve is required pursuant to such Senior Loan Documents, or, to the extent not so required, pursuant to Section Six, Paragraph 6.24 of this Agreement. The City shall have a subordinate security interest in the Replacement Reserve, and Borrower shall execute any instruments or other documents necessary to create or perfect such interest.

P. Any property management fee, asset management fee or other similar fee ("Property Management Fee") is limited to no more than five percent (5.0%) in the aggregate of the Project's gross annual income.

Q. Borrower has submitted to the Director a signed Certificate regarding lobbying ("Lobbying Certificate") in the form set forth in the Appendices to this Agreement (or in the form in effect at the time the Lobbying Certificate was submitted to the Director).

R. In addition to the provisions of the main text of this Agreement, this Agreement consists of "Schedules", "Appendices", "Exhibits" and "Attachments", as follows

1. Schedule setting forth definitions.

2. Appendices setting forth the specifics of requirements described in this Agreement or other City standard forms, policies and requirements, which specifics and forms may be modified by the City from time to time or which may change as a result of change in or to Applicable Law, relating to:

- (a) the City's MWSBE programs to which the Borrower's contractors and subcontractors are subject;
- (b) insurance to be maintained by the Borrower and also to be contained in the Approved Construction Contract and other Construction and Supply Contracts;
- (c) Release and Indemnity provisions to be to be contained in the Approved Construction Contract and other Construction and Supply Contracts;
- (d) Construction Contract Requirements including bidding requirements (if applicable);
- (e) the Monitoring Forms to be used by Borrower;
- (f) Applicable Law;
- (g) the Lobbying Certificate;
- (h) the Debarment Form;
- (i) the Survey Requirements;
- (j) Property Condition Assessment requirements, if applicable;
- (k) Multifamily Relocation Requirements, including related forms;
- (l) Reserved;

- (m) GLO Lien Waiver;
- (n) Minimum Property Standards; and
- (o) City of Houston Workforce Protection Requirements.

3. Exhibits, setting forth:

- (a) the metes and bounds or legal description of the Land;
- (b) commitments evidencing “Other Financings”, if any;
- (c) the Preliminary Project Budget.
- (d) Scope of Work; and
- (e) Construction Schedule.

4. Attachments, as per the list of Attachments on the Attachments title page, describing and setting forth the information and the various specific documents and contents of specific documents particular to the City’s Loan to be provided by or on behalf of the Borrower as conditions precedent to the Closing of the City’s Loan or to be executed by Borrower and the City at the Closing of the City’s Loan.

S. The City Loan is a community development activity undertaken by the City and authorized under Chapter 373 or Chapter 374 of the Texas Local Government Code.

T. The recitals and statements contained in this Section One shall be incorporated into this Agreement, and Borrower confirms, agrees and acknowledges that the information contained in this Section One is true and correct in all material respects and, to the extent that any of the subsections contained in this Section One contain covenants or agreements of Borrower, Borrower hereby covenants and agrees to comply with the terms therewith. Borrower further agrees to comply with all laws and other requirements contained in the Appendices.

SECTION TWO
REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants, and such representations and warranties shall be deemed to be continuing representations and warranties during the entire Term of this Agreement, and so long as the City shall have any commitment or obligation to make any disbursements of the Loan Proceeds hereunder, and so long as all of or any part of the City's Loan remains unpaid and outstanding under any Loan Document, as follows:

2.1. Ownership and Use of Land. Borrower holds or will hold either at the time of Closing or as a result thereof fee simple title in and to the Land located in Houston, Harris County, Texas, having an address of 2077 South Gessner Road, Houston, Harris County, Texas 77063, and more particularly described on **EXHIBIT A**, subject however, to the Permitted Encumbrances (as defined in the Deed of Trust). Borrower shall promptly disclose to the Director if Borrower has acquired the Land from any officer, director, employee, partner, company or individual of, related to or affiliated with Borrower.

2.2. Information Submitted True and Correct. The information contained in or submitted in connection with Borrower's application to the City for the City Loan, as amended by further information provided and disclosed to the City, is true and correct.

2.3. Taxes and Assessments. There are no delinquent taxes, assessments, or other impositions on the Land or Project, or if there are any delinquent taxes, assessments, or other impositions on the Land or Project, same will be paid prior to or simultaneously with Closing of the City Loan. The Land or Project has not been subject to any special (reduced) real estate appraisal, or abatement, exemption or deferral of ad valorem taxes in the five (5) years preceding the Effective Date of this Agreement, unless Borrower has an

effective agreement providing that another party is liable for all liability, accruing prior to Borrower's acquisition of the Land or Project, for ad valorem taxes owing as a result of an change or revocation of such special (reduced) real estate appraisal, or abatement, exemption or deferral of ad valorem taxes.

2.4. Financial Capacity.

2.4.1. The financial representations made to the City by Borrower concerning Borrower's financial condition are true and correct and, upon the Closing of the City Loan, Borrower has the financial capacity to carry out its obligations under this Agreement and the Loan. If any material negative change in Borrower's financial condition occurs, Borrower shall report such change to the City within five (5) business days.

2.4.2. The financial representations made to the City by Borrower and by Guarantor to Borrower or the City concerning Guarantor's financial condition are true and correct and, upon the Closing of the City's Loan, Guarantor has the financial capacity to carry out its obligations under the Construction Completion Guaranty. If any material negative change in Guarantor's financial condition occurs, Borrower shall report such change to the City within five (5) business days.

2.4.3. The Borrower and Guarantor are in good standing on all outstanding loans and loan commitments with no defaults or negative collection actions on any current or previous loans that City reasonably determines would adversely impact the ability of Borrower or Guarantor to perform hereunder. Borrower has provided the City with a true and correct listing with addresses of all multifamily properties owned or managed by Borrower.

2.5. Authorization. All action on the part of Borrower necessary to authorize the transactions contemplated by this Agreement have been taken, and upon execution of this Agreement, this Agreement shall constitute the binding and enforceable obligation of Borrower.

2.6. Liens. As of the Closing Date, there are no existing or threatened liens against the Project (other than the liens securing the Senior Loan and the Subordinate Loan), and the Borrower does not know of any reason such liens may be filed or threatened against the Project. As of the Closing Date, all payables and liabilities to parties providing goods or services to Borrower have been paid and no payables or liabilities exist that are more than thirty (30) days outstanding.

2.7. Preliminary Project Budget Contents. The Preliminary Project Budget specifies (a) a listing of all costs necessary to (i) acquire the Land (if applicable); (ii) complete the Project; and (iii) reach a ninety percent (90%) occupancy level, and (b) the sources of funding which will be used to complete the Work and reach stabilized occupancy which will be enumerated on AIA documents if required by the City and shall indicate those items to be funded with Borrower's equity.

2.8. Expertise. Borrower has engaged or will engage prior to Closing competent persons and firms for the purpose of constructing, leasing and managing the Project.

2.9. Legal Existence. Borrower is a limited liability company, duly created and validly existing and in good standing under the laws of the State of Texas.

2.10. Insurance Claims. Borrower has provided the Director with true and correct copies of all insurance claims made or which Borrower plans to make (together with all supporting documentation) with respect to any damage to the Project within the last six

(6) years including, without limitation, damage to the Project resulting from Hurricane Harvey. None of the Loan Proceeds will be used to pay for damages covered by any insurance claim or any insurance policy including delayed or future payments anticipated under insurance policies. No portion of the Loan Proceeds shall be utilized to satisfy any deductible under such insurance policies.

2.11. Access. Access by vehicles to the Land for the full utilization of the improvements for their intended purposes either (a) exists over paved roadways that have been completed, dedicated to the public use and accepted by the appropriate Governmental Authority, or (b) the necessary rights-of-way for such roadways have been acquired by the appropriate Governmental Authority and all necessary steps have been taken by Borrower, and such Governmental Authority to assure the complete construction and installation of such roadways.

2.12. Conflict of Interest. Borrower does not have a conflict of interest as prohibited by 24 C.F.R. § 570.611, 2 C.F.R. § 200.317 and 2 C.F.R. § 200.318. If required by the Director, Borrower shall furnish to the Director a conflict of interest disclosure form (in effect at the time the form is required to be submitted to the Director), on or before the execution of this Agreement.

SECTION THREE **CONDITIONS PRECEDENT FOR CLOSING THE CITY LOAN**

All of the conditions listed in this Section must be satisfied by the date of Closing of the City's Loan and the satisfaction of each of such conditions shall be a condition precedent to Closing of the City Loan:

3.1. Execution and Approval of Property Management Agreement. The Borrower and the Property Manager shall have executed the Property Management Agreement

which shall have been approved by the Director. The Property Management Agreement will be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender, and which may be collaterally assigned to Subordinate Lender as well) as additional security for the repayment and performance of the City Loan pursuant to an “Assignment of Property Management Agreement” instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney. The Property Management Agreement may be amended from time to time with the Director’s consent, and shall provide that the Property Manager may be terminated by Borrower if required by the Director.

3.2. Execution and Approval of Architect’s Contract. The Borrower and the Architect (if any) shall have executed the Architect’s Contract which shall have been approved by the Director; the Architect’s Contract will be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender, and which may be collaterally assigned to Subordinate Lender as well) as additional security for the repayment and performance of the City Loan pursuant to an “Assignment of Architect’s Contract, Plans and Specifications, and Consent” instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney (“Assignment of Architect’s Contract, Plans and Specifications, and Consent”).

3.3. Approval of Plans, Specifications, and Drawings. The Director shall have approved the scope of the Work, any site plans, floor plans, Environmental Mitigation plans, wall sections, architectural, structural, civil, HVAC, mechanical, electrical, plumbing, and landscaping plans, and any other applicable drawings (collectively, the “Approved Plans, Specifications, and Drawings”) required for the construction of the

Project according to the Approved Construction Contract, which Approved Plans, Specifications, and Drawings will also be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender, and which may be collaterally assigned to Subordinate Lender as well) as additional security for the repayment and performance of the City Loan pursuant to the Assignment of Architect's Contract, Plans, Specifications, and Consent. The Borrower shall pay the City Five Thousand and No/100 Dollars (\$5,000.00) for review of the Approved Plans, Specifications and Drawings and cost review, which fee shall not be charged by the City if the Senior Lender's plan and cost review indicates that the City is entitled to rely on it and such review is acceptable to the City, at the Director's sole discretion.

3.4. Approval of Construction Schedule and Drawdown Schedule. The Director shall have approved the construction schedule and drawdown schedule for the Project (collectively referred to as the "Approved Construction Schedule").

3.5. Funding Commitments. The sum of the City Loan, commitments for the Other Financings (if any), deferred developer fee, Net Operating Income, and any equity contributions for the Project shall be in at least the amount required to acquire the Land (if applicable), complete construction of the Project and allow operation of the Project in accordance with the Approved Final Operating Budget and the Approved Final Project Budget, according to the Approved Final Plans, Specifications and Drawings and the Approved Construction Contract. Borrower shall disclose any changes in the commitments for Other Financings and/or any changes in any equity contributions to the Project to the City as soon as practical, but in any event no later than five (5) business days after knowledge of such changes. The City's funding shall be subject to the closing

of the funding of all Other Financing (including without limitation, the Senior Loan and the Subordinate Loan) in the manner specified in the Intercreditor Agreement.

3.6. Approval of Financing Documents. The Director shall have approved the documents evidencing the Other Financings.

3.7. Priority of City's Restrictive Covenants. Notwithstanding anything to the contrary set forth in this Agreement or in any of the other Loan Documents, the City's Restrictive Covenants, once recorded in the Official Public Records of Real Property of Harris County, Texas shall have priority during the Affordability Period over any and all liens proposed to evidence or secure the Senior Loan and any Other Financings (including without limitation, any refinancing or refunding thereof subsequent to the Closing Date). Such priority shall be evidenced pursuant to (i) the Intercreditor Agreement (hereinafter defined) and (ii) the subordination agreements referenced in the Intercreditor Agreement in substantially the form referenced in and attached to the Intercreditor Agreement or in a form otherwise approved by the City Attorney, filed for record in the Official Public Records of Real Property, Harris County, Texas.

3.8. Intercreditor Agreement. The lenders under any Other Financings (if any) and the Construction Senior Loan, as well as Borrower and the City shall have executed an intercreditor agreement (the "Intercreditor Agreement") in the form set forth in the Attachments, or in a form otherwise approved by the City Attorney, Senior Lender, the Subordinate Lender, and any other lenders, as applicable, which agreement shall provide for periodic estoppel certificates from the Construction Senior Lender as to the balance and maturity date(s) of the Construction Senior Loan and whether any defaults are outstanding under the Senior Loan and shall provide for reasonable notice of default of

Borrower under the Construction Senior Loan to be provided to the City with a reasonable cure period unless the requirements are waived by the Director and the City Attorney, in their sole discretion.

3.9. Final Budgets.

3.9.1. Approved Final Operating Budget. The Director shall have approved a detailed operating budget (“Approved Final Operating Budget”) for the Project. The Approved Final Operating Budget shall include a cash flow projection of all Project related income, expenses, debt service on all debt encumbering the Project, reserves for replacements of capital items, and any other costs associated with the operation of the Project for the period commencing with the initial leasing of the units within the Project and on an annual basis thereafter through the entire Affordability Period in a form as the Director may require. A proforma projection (and rent roll for existing, operational properties) specifying the unit type (e.g., 1 bedroom/1 bath, 2 bedroom/2 bath), the square footage of the units, and projected monthly rental rate shall also be provided to the Director prior to Closing.

3.9.2. Approved Final Project Budget and Approved Final Construction Budget. The Director shall have approved a detailed budget (“Approved Final Project Budget”) for the Project which shall not vary from the Preliminary Project Budget unless such variance is approved in writing by the Director. The Approved Final Project Budget shall include the acquisition costs (if applicable), the architectural and design costs, the approved final Construction Budget which shall include all costs to construct the Work and any other construction costs for the Project (“Approved Final Construction Budget”) and all other costs necessary to complete the Project per the Approved Plans, Specifications, and Drawings and Approved Construction Contract. The Approved Final Project Budget and the Approved Final

Construction Budget shall be in such forms as the Director may require, and shall be in sufficient detail to permit the City to effectively and adequately monitor the use of the Loan Proceeds for the payment of costs pursuant to the Approved Construction Schedule to ensure that Loan Proceeds are expended only for costs eligible under applicable GLO, CDBG and other applicable federal regulations. A hard cost contingency of five percent (5%) is and a soft cost contingency of 5% of soft costs are required in the Approved Final Construction Budget, and the City reserves the right to require additional contingencies. Subsequent to the Closing, any changes to the Approved Final Project Budget or the Approved Final Construction Budget must be approved in writing by the Director, such approval not to be unreasonably withheld. If required by the City, the Borrower, at the Borrower's expense, shall engage appropriate third party inspectors acceptable to the Director, in his or her sole discretion, or alternatively, the City, may utilize its own internal or external inspectors (collectively, "Approved Inspectors") to verify the budgets submitted to the Director for approval under this Section, to report to the Director on the adequacy and reasonableness of the amounts set forth in such budgets to complete the Project and the Work according to the Plans, Specifications and Drawings and to verify that all draws under the Approved Final Construction Budget conform with such budget, that all labor and material for which disbursement is requested have gone into the Project in accordance with the Plans, Specifications and Drawings and that the remaining undisbursed portion of the City Loan and Other Financings (if any) are adequate to complete the Work and the Project. The Borrower's agreement with any Approved Inspectors engaged by Borrower shall provide that the City is entitled to rely on the Approved Inspector's Reports and that the reports shall be addressed to the City and the City may charge and Borrower shall pay \$1,000.00 a month for construction inspections or review throughout the construction period. Notwithstanding the

foregoing, if Senior Lender's inspectors are acceptable to the City, as determined by the Director in his or her sole discretion, such inspectors shall be deemed Approved Inspectors and the City shall not charge \$1,000.00 a month for construction inspections or review and the City shall rely on the inspection reports of Senior Lender's inspectors, provided that (a) the inspection reports are addressed to the City, and (b) the City is entitled to rely on the inspection reports.

3.10. Construction Contract and Related Matters.

3.10.1. Approved Construction Contract. Borrower and Contractor (and Contractor and its prime subcontractor) shall have executed the Construction Contract approved by the Director ("Approved Construction Contract"), which Approved Construction Contract will be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender, and which may be collaterally assigned to Subordinate Lender as well) as additional security for the City Loan pursuant to an "Assignment of Construction Contract" instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney ("Assignment of Construction Contract"). The Approved Construction Contract shall be a fixed price/stipulated sum or guaranteed maximum price contract which shall be consistent with the Approved Final Construction Budget. Fees, overhead and general conditions of the Contractor shall not exceed six percent (6%), two percent (2%), and six percent (6%), of the cost of the Work, respectively.

3.10.2. Bonds. Borrower or Contractor shall furnish (a) a performance bond, with dual obligee rider naming the City as an additional beneficiary, for the full amount of the construction or rehabilitation price ("Performance Bond"); (b) a maintenance bond to secure the Defects Warranty ("Maintenance Bond"); and (c) a statutory payment bond ("Payment Bond"). The surety upon any required bond must be on the current list, published by the United States

Treasury Department, of acceptable sureties for federal bonds and must have an AM Best rating of “A” or better. The form of the Performance Bond, Maintenance Bond, and Payment Bond shall be as set forth in the Attachments or in other forms approved by the City Attorney. The Performance Bond, Maintenance Bonds and Payment Bond must be approved by the City attorney in its reasonable discretion.

3.10.3. “Defects Warranty”. Borrower will cause Contractor to expressly and unconditionally agree to warrant and guarantee (“Defects Warranty”) for a period of one (1) year any and all work performed or materials supplied to be free of defects, omissions, unsoundness or flaws, by executing the Maintenance Bond in the form set forth in the Attachments or in other form approved by the Director. The one (1) year period shall commence on the date of issuance of the Certificate of Completion. The Defects Warranty shall include any condition which may impair or tend to impair the safe and normal use, functioning or enjoyment of the Project and which results in any manner from any and all labor and/or materials used or supplied under the Approved Construction Contract whether or not the materials or equipment are guaranteed by the manufacturer or supplier. The Defects Warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any materials, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is required in the Approved Construction Contract. The Maintenance Bond shall provide that the Borrower, or Contractor for the benefit of Borrower, shall obtain all manufacturers’ and suppliers’ written guarantees, warranties and operating instructions covering materials and equipment furnished under the Approved Construction Contract together with any documentation required for validation of such guarantees and warranties.

3.11. Lobbying. On or before the Closing of the City’s Loan, Borrower and Contractor shall each submit to the Director a signed Certificate Regarding Lobbying in the form set forth in the Attachments (or in the form in effect at the time the Certificate is required to be submitted to the Director).

3.12. Appraisal. The Borrower, at Borrower’s sole cost and expense, shall obtain an appraisal of the value of the fee interest in the Project, which appraisal shall meet the definition of an appraisal under the URA at 49 C.F.R. § 24.2(a)(3), which shall be done in accordance with the requirements of the URA at 49 C.F.R. § 24.103, and which shall comply with the Appraisal Requirements (“Appraisal Requirements”) in the Appendices. The appraisal shall be acceptable to the Director, shall be prepared by a qualified appraiser approved by the City, and the City is to be listed as an intended user.

3.13. Survey. The Director shall have approved a current survey (“Survey”) of the Land that complies with the “Survey Requirements” (“Survey Requirements”) in the Appendices, including but not limited to **APPENDIX 4**, and contains such other information as required by Applicable Law.

3.14. Title Commitments; Insured Closing Service Letters.

3.14.1. City’s Owner’s Title Policy. Except as waived by the Director in writing in accordance with Section 4.2 herein, the Title Company shall issue at Borrower’s expense, in substance approved by the City Attorney, a Commitment to issue to the City an Owner’s Policy of Title Insurance (“City’s Owner’s Title Policy”) naming the City as Insured, which will provide in Schedule A of the City’s Owner’s Title Policy that the estate or interest that is to be insured under the Owner’s Policy is “the Restrictive Covenants dated _____, 2022 and recorded under Harris County Clerk’s File No. # _____” with the only Schedule B

Exceptions of the City's Owner's Title Policy, which will be allowed to be shown in the City's Owner's Title Policy being those which are acceptable to the Director, in his or her reasonable discretion.

3.14.2. City's Loan Title Policy. The Title Company shall issue at Borrower's expense, in substance approved by the Director, a Commitment to issue to the City a Loan Policy of Title Insurance ("City's Loan Title Policy") in the amount of the City's Loan naming the City as Insured, insuring the second lien priority of the liens securing the City's Loan, subject only to:

- (1) the City's Restrictive Covenants;
- (2) TDHCA's Restrictive Covenants;
- (3) the Senior Loan; and
- (4) Schedule B Exceptions approved by the Director, in his or her sole

discretion.

3.14.3. Deletion of the Arbitration Provisions. The arbitration provisions of the City's Loan Title Policy and the City's Owner's Title Policy shall be endorsed as deleted.

3.14.4. Insured Closing Service Letter. The Title Insurer (as defined in Section Four, Paragraph 4.4) shall have issued the City an "insured closing service letter" relating to the closing of the City's Loan and such insured closing service letter shall be in effect as of the time of the closing of the City's Loan.

3.15. Environmental.

3.15.1. Director's Approval. The Director shall have approved a "Phase I" (or "Phase II", if the Director has required) environmental site assessment (and any updates thereto) (the "Environmental Site Assessment") and the Environmental Review (as defined herein). The

Environmental Site Assessment shall be performed by a qualified environmental services firm, furnished to the Director by the Borrower, at the Borrower's expense, in compliance with and prepared in accordance with standards adopted and promulgated by the American Society of Testing and Materials (ASTM), accompanied by a reliance letter submitted by the issuer of such Environmental Site Assessment for the benefit of the City. The required Environmental Site Assessment must show, among other things that the Project is not in a "Coastal Barrier Resource System unit," as such term is defined in the Coastal Barrier Resources Act (CBRA) of 1982, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. § 3501), as amended, or in a runway clear zone, any lead-based paint and asbestos containing materials within the Project and, if any, identify any "Special Flood Hazard Area", as such term is defined and designated by the Federal Emergency Management Agency ("FEMA"). The Environmental Site Assessment must be dated within six (6) months of Closing or if this timeframe is exceeded, an assessment which is less than twelve (12) months old may be updated by the original issuer if the update report is issued within six (6) months prior to Closing and an update is acceptable to the City's in-house environmental risk manager.

3.15.2. Environmental Indemnity Agreement. Borrower shall have executed and delivered an "Environmental Indemnity Agreement" in favor of the City (the "Environmental Indemnity Agreement") in the form set forth in the Attachments or on another form approved by the City Attorney.

3.15.3. Flood Plains. The Project may not be located in a Special Flood Hazard Area (including, without limitation, the 100 year flood hazard area) unless such location is approved by HUD, which approval may be obtained through and included in the written "release of funds" authorization from HUD, as further described in Section Five, Paragraph 5.4.

3.16. Evidence of Insurance. Evidence of fire, hazard, flood (as applicable), builder's risk, workman's compensation, and all other insurance that is required by this Agreement, each naming the City as loss payable or mortgagee.

3.17. Reserved.

3.18. Cost Reasonableness Analysis; Property Condition Assessment. Borrower shall have provided the Director with a Cost Reasonableness Analysis, and if rehabilitation or reconstruction of the Project is contemplated, a Property Condition Assessment, which shall both (if applicable) be in form and content acceptable to the Director, prepared by an architect or engineer acceptable to the Director at Borrower's expense, in compliance with and prepared in accordance with standards set forth in **APPENDIX 10** and those other standards which may be required by the Director. The Director may rely on the Cost Reasonableness Analysis and the Property Condition Assessment (if applicable) provided to the Senior Lender if the City is a named recipient of such reports.

3.19. Tenant Selection Policy. With respect to the Designated Units, Borrower shall adopt written tenant selection policies and criteria reasonably acceptable to the Director ("Tenant Selection Policy"). Borrower's written tenant selection policy must be submitted and approved by the Director prior to Closing.

3.20. Affirmative Marketing Plan. The City will use affirmative marketing efforts, which will include development of an "Affirmative Marketing and Outreach Plan" based on HUD regulations to ensure the Project is affirmatively marketed to the public at large. The Affirmative Marketing and Outreach Plan shall ensure that outreach and

communication efforts reach eligible LMI Persons from all racial, ethnic, national origin, religious, familial status, disability, and gender groups.

3.21. UCC Search. Borrower shall provide the City with a UCC search dated no sooner than thirty (30) days prior to Closing indicating that the Project is free and clear from any security interests and other liens (or will be at Closing).

3.22. Real Estate Contract. Borrower shall provide City with a copy of the Real Estate Contract for the Land.

3.23. Entity Documentation. Borrower shall provide City with copies of (i) Borrower's executed Operating Agreement, together with all notes, guarantees and other instruments and agreements issued pursuant thereto; (ii) all corporate and company documents for Borrower's general partner or managing member, as applicable, and any Guarantor; and (iii) evidence of Borrower's and Borrower's general partner or managing member, as applicable, and each Guarantor's due formation, organization, good standing, existence and authorization to enter into this Loan Agreement and the related Loan Documents (collectively, the "Entity Documentation").

3.24. Utility Letters. Borrower shall provide the City with utility letters ("Utility Letters") from the appropriate utility providers evidencing that the Project has access to public water, sanitary and storm sewer, electricity, gas and other required utilities in quantities sufficient for the successful operation of the Project and which utilities shall enter the Project through adjoining streets or in accordance with recorded easements across private lands.

3.25. Contracts. Borrower shall provide the City with all operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the

Project which the City, at its discretion, may require be collaterally assigned to the City (subject to Senior Lender's rights under the Senior Loan Documents, which may be collaterally assigned to Subordinate Lender as well) together with an acknowledgement of the assignment by the counterparties thereto.

SECTION FOUR **CLOSING**

In addition to all of the conditions listed in Section Three being satisfied as conditions precedent to closing of the City Loan, the City shall not be obligated to close the City Loan unless the following requirements are satisfied or waived by the City in writing:

4.1. Delivery and Execution of Documents. Borrower and Guarantor as the case may be, must, concurrently with closing of the City's Loan, execute, or cause to be executed as applicable, and deliver to the City, together with any other documents, certificates, affidavits, policies and other deliverables required hereunder or under any of the Appendices hereto or otherwise reasonably required by the City including, but not limited to, the following:

1. the Borrower's Note;
2. Reserved;
3. the Deed of Trust;
4. the Financing Statements;
5. the City's Restrictive Covenants;
6. Reserved;
7. the Assignment of Construction Contract;
8. the Assignment of Architect's Contract, Plans and Specifications, and Consent;
9. Reserved;

10. the Assignment of Property Management Agreement;
11. this Agreement;
12. Reserved;
13. the Environmental Indemnity Agreement;
14. Reserved;
15. the Intercreditor Agreement;
16. the Construction Completion Guaranty executed by Guarantor;
17. the Certification regarding Lobbying;
18. the Affidavit of Use of Funds on the form required by the Director stating that the Loan Proceeds will be used by Borrower only for the purposes set forth in the Loan Agreement;
19. the Affidavit of No Commissions on the form required by the Director stating that as of Closing no commissions, fees or other payments of any kind have been made to Borrower, any general or limited partner of Borrower, or employee of Borrower, or any company or individual related to or affiliated with Borrower;
20. the Certification Regarding Debarment, Suspension and Other Responsibility Matters;
21. a copy of the fully executed Approved Construction Contract;
22. a copy of the fully executed Architect's Contract;
23. a copy of the fully executed Property Management Agreement;
24. a copy of the fully executed documents evidencing, guaranteeing, securing or otherwise pertaining to any of the Other Financings;
25. Reserved;
26. Reserved;
27. a copy of the Approved Plans, Specifications and Drawings for the Project;
28. a copy of the Approved Construction Schedule;
29. a copy of the Approved Final Operating Budget including a rent roll or proforma projection;

30. a copy of the Approved Final Project Budget (including the Approved Final Construction Budget);
31. an Appraisal of the Project meeting the Appraisal Requirements;
32. a Survey of the Land meeting the Survey Requirements;
33. certificates or policies of the Borrower's insurance required by this Agreement or by the Deed of Trust, including flood insurance when required pursuant to all applicable federal, state, and local laws, rules, regulations and ordinances including, without limitation the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and the National Flood Insurance Reform Act of 1994, as amended, Chapter 19 (Floodplain) of the City of Houston, Texas, Code of Ordinances or as otherwise required by HUD, City ordinance or the Director;
34. the (i) Payment, (ii) Performance, and (iii) Maintenance Bonds;
35. the City's Loan Title Policy, a Proforma Loan Title Policy, or a Commitment to issue the same, dated as of the Closing Date, in conformity with the requirements of this Agreement and the Insured Closing Letter together with UCC Search;
36. the City's Owner's Title Policy, a Proforma Owner's Title Policy, or a Commitment to issue the same, dated as of the Closing Date, in conformity with the requirements of this Agreement and the Insured Closing Letter
37. evidence that all premiums in respect of such Title Insurance Policies have been paid;
38. proof of compliance with Multifamily Relocation requirements, if applicable;
39. Cost Reasonableness Analysis;
40. Property Condition Assessment (if applicable);
41. Resolutions of Borrower authorizing the City Loan or other evidence satisfactory to the Director that Borrower has authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City Attorney ("Borrower's Resolutions");
42. Resolutions of the Borrower's LLC members authorizing the City Loan or other evidence satisfactory to the Director that Borrower has authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City Attorney;

43. Resolutions of Guarantor authorizing the Guaranty or other evidence satisfactory to the Director that Guarantor has authority to enter into the Guaranty in a form acceptable to the City Attorney;
44. legal opinion(s) of counsel for Borrower and Guarantor addressing, without limitation the authority of the parties signing this agreement and the closing documents on behalf of the Borrower and the Guarantors and as to the enforceability of such documents in a form acceptable to the City Attorney ("Borrower's Counsel's Opinion");
45. the Borrower's Affirmative Fair Housing Marketing Plan;
46. the Tenant Selection Policy;
47. the Entity Documentation and Borrower's Partnership Agreement;
48. Utility Letters;
49. all other financing and recordable documents required by other lenders and the City's Housing and Community Development Department, as applicable; and
50. such other information and documentation which may be required by the Director to evidence Borrower's satisfaction of the conditions required by the City to close the City Loan.

Items 1-20, 24-25, 34-36, 42-44 and 47 and 49 listed above must be in form and substance acceptable to the Director and the City Attorney, in their reasonable discretion. Items 21-23, 26-33, 37-41, 45-46, 48 and 50 must be in form and substance acceptable to the Director, in his or her reasonable discretion. In addition, as a condition of Closing, the City must have obtained environmental clearance and authorization to release funds as further described in Section Five, Paragraph 5.4 herein. The City has the right to also require the collateral assignment of any contracts with respect to the operation of the Project (which may be collaterally assigned to Subordinate Lender as well) and the acknowledgement of such assignment by the counterparties thereto, such assignment to be subordinate to the assignment to Senior Lender.

4.2. Waiver of Conditions; Additional Conditions. The Director may, by written instrument, waive any of the conditions or requirements set forth in this Agreement as a

condition precedent to or a requirement of closing of the City's Loan, provided that waiver of any condition or requirement shall not operate as a waiver of the City's right to enforce any other condition or requirement set forth in this Agreement. In addition, the written consent of the City Attorney shall be required for the waiver of any legal requirement of the Loan Documents. The Director may impose such additional conditions to, or requirements of, Closing of the City Loan as are necessary under the circumstances or are otherwise customary in connection with the CDBG-DR17 Program or other Federal guidelines or regulations.

4.3. Escrow at Title Company. All or any part of the sums to be funded by the City pursuant to this Agreement may be disbursed to a title company or mortgage servicer approved by the Director, to be held in escrow for subsequent disbursement to Borrower and other authorized payees or for return to the City pursuant to the terms and conditions of this Agreement. Upon receipt of a payment or disbursement request from the City's Housing and Community Development Department, the Controller of the City is authorized to issue a check, cash deposit by wire transfer, or warrant made payable to the order of the designated title company or mortgage servicer pursuant to this paragraph and to fund the obligations of the City under this Agreement. Notwithstanding the foregoing, subject to the consent of the Director, the parties to this Agreement may agree among themselves to close the City Loan in an alternative manner. For all draws other than the initial closing draw, the remaining amounts of the City Loan shall be drawn into an account in the name of Owner and controlled by and held by Senior Lender (the "Construction Account"). Funds may only be drawn down for eligible costs in accordance with the Final Construction Budget. The City shall delegate, in the

Intercreditor Agreement, to Senior Lender authority to further approve such draws that have been submitted by the Owner, approved by the Director and wired into the Construction Account in accordance with the requirements of this Agreement and the other Loan Documents.

4.4. Closing of City's Loan At Title Company. The closing of the City's Loan shall occur at a title company approved by the Director ("Title Company"). In no event will the City's Loan be closed by a "fee attorney" or escrow officer who is not a full-time employee of the Title Company or Title Insurer who will "close the transaction". The Director reserves the right to require a representative of the Borrower with authority to execute the Loan Documents will personally attend Closing at the office of the Title Company in Houston, Texas.

4.5. Closing Deadline. Notwithstanding anything contained in this Agreement to the contrary, Borrower shall cause all conditions precedent to Closing to be satisfied on or before thirty (30) days from the date of City Council approval (the "Outside Closing Date"). Unless Closing occurs on or before the Outside Closing Date (unless the Director, in his sole and absolute discretion, consents to an extension of the Outside Closing Date), the Director may, without providing prior notice, terminate this Agreement by written notice to Borrower, in which event the City's obligations hereunder shall automatically cease and be of no further effect.

4.6. City Expenses. Borrower shall pay all third party expenses incurred by the City whether or whether not the City Loan closes including, without limitation, any expenses incurred by the City for outside counsel (up to a maximum of Forty-Nine Thousand and No/100 Dollars (\$49,000.00)).

SECTION FIVE
CITY AND FEDERAL FUNDING LIMITATIONS

5.1. Dependency upon Federal Funding. Borrower understands that the availability of the Loan Proceeds is dependent upon federal and state funding. Unless and until the City receives adequate funds from GLO, the City shall have no obligation to Borrower under this Agreement. In the event that the funds received by the City under the CDBG-DR17 Program are insufficient to meet the City's prior commitments, the Director may reallocate all or a portion of the funds that are budgeted for this Agreement.

5.2. No Liability for Interruption of Funding. In the event that GLO or other applicable governmental agency (for whatever reason) instructs the City to cease funding of the City Loan, the City may do so without obligation to Borrower and without being liable to Borrower for any damages Borrower may incur as a result of such cessation in funding. The City shall give Borrower written notice of such instructions promptly upon receiving such instruction, at which time, any and all of the City's obligations under this Agreement or any of the Loan Documents shall cease. In furtherance of the foregoing, in the event that the City provides Borrower with notice of interruption as contemplated in this Section Five, Borrower shall execute any releases or other documents or agreements that the City determines necessary to enable the City to reallocate all or a portion of funds that are available pursuant to this Agreement that have not been funded to Borrower.

5.3. Original Allocation. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has (in addition to prior appropriations and allocations) appropriated and allocated the Loan Amount to be used, in part or in whole, to discharge its duties, if any, to provide money under this Agreement.

5.4. Environmental Clearance and Release of Funds. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute the City's commitment of funds or site approval, and that such commitment of funds and site approval may occur only upon satisfactory completion of the Environmental Review, receipt by the City of a written "release of funds" authorization from HUD (Authority to Use Grant Funds, form HUD-7015.16 or successor form) in accordance with 24 C.F.R. Part 58 and Executive Order 11988 ("Authority to Use Grant Funds" or "AUGF") from the GLO and any Environmental Mitigation required therein. The parties further agree that if the City is to provide any funds to the Borrower in connection with the Project, such disbursement is conditioned on the City's determination to proceed with, modify, or cancel the City's Loan based on the results of a subsequent Environmental Review of the Land and the improvements thereon.

5.5. City Council Approval Required. This Agreement is subject to the approval of the City Council.

SECTION SIX **COVENANTS OF BORROWER**

Borrower agrees as follows:

6.1. Use of Proceeds; Order of Funding and Disbursement; Reimbursement of Funds.

6.1.1. Use of Proceeds. Borrower shall use the proceeds of the City Loan and the Other Financing only for items included in the Approved Final Project Budget. Further, proceeds of the City Loan shall only be used for hard construction or other allowable costs, acquisition costs, relocation expenses and work performed that is eligible for payment under the

regulations applicable to the City Loan. No portion of the City Loan will be used to pay for damages to the extent covered and paid for by any FEMA reimbursement, SBA assistance, or any insurance policy including delayed or future payments anticipated under any insurance policy. Borrower covenants that the City Loan does not constitute a duplication of benefits to Borrower within the meaning of Section 312 of the Stafford Act and the requirements of 76 Fed. Reg. 71060 as updated by 84 Fed. Reg. 28836 and 84 Fed. Reg. 28848.

6.1.1 Order of Funding and Disbursement. The proceeds of the City Loan, and Other Financings (if any), shall be disbursed as set forth in the Intercreditor Agreement among City, the Construction Senior Lender, Subordinate Lender and Borrower, in the form attached hereto in the Attachments.

6.1.2. Reimbursement to City. Borrower agrees that it shall reimburse the City in a sum equivalent to the amount of disallowed expenditures in the event that GLO or other applicable state or federal agency, through audit exception or other action, determines that Borrower's expenditure of funds loaned to it under this Agreement for the Project was not made in compliance with this Agreement (including without limitation, for the purposes set forth in Section Six, Paragraph 6.1.1 hereof) or Applicable Law. Notwithstanding anything to the contrary, this provision shall survive the end of the Term of this Agreement.

6.2. Construction Matters.

6.2.1. Commencement and Completion of Work; Change Orders. No Work shall commence on the Project prior to the Closing of the City's Loan. Borrower shall begin the Work within thirty (30) days after the Closing of the City's Loan, but the City shall have no obligation to fund any portion of the Loan Proceeds until the issuance of all City authorizations

and required permits, including without limitation the Notice to Proceed to be issued by the City. Borrower shall complete the Work in accordance with the Approved Construction Schedule but in no case later than the earlier of (i) twenty-four (24) months after the Closing of the City's Loan, subject to Force Majeure extensions, or (ii) the expiration date of the GLO Contract, time being of the essence (the "Approved Construction Period"). Any changes to the Approved Construction Schedule, Approved Construction Contract, Approved Construction Period, or the Approved Plans, Specifications, and Drawings must be submitted and approved in writing by the Director. Subject to waiver by the Director, Borrower shall not be entitled to receive any disbursements of the City Loan after the expiration of the Approved Construction Period.

6.2.2. Good and Workmanlike Manner; Engagement of Experts. Borrower shall perform or cause to be performed, the Work in a good and workmanlike manner and in accordance with the Approved Plans, Specifications and Drawings, the Approved Construction Schedule (subject to delays caused by Force Majeure not to exceed sixty (60) days), the Approved Final Construction Budget and the Approved Construction Contract. Borrower shall engage competent persons and firms for the purpose of constructing, leasing and managing the Project.

6.2.3. Compliance with Approved Construction Contract. Borrower shall fully and timely perform Borrower's obligations under the Approved Construction Contract.

6.2.4. Written Agreements with Subcontractors. Borrower shall cause Contractor to enter into written agreements with each Subcontractor who does work on or delivers materials to the Project. These subcontracts shall be subject to review and approval by

the Director; to the extent that the Director requires, subcontractors shall be required to execute assignment and subordination of liens in favor of the City.

6.2.5. Construction Contract Requirements. The Approved Construction Contract and any other written agreements with contractors, subcontractors, or suppliers (collectively, the "Construction Contracts") shall contain the requirements set forth in the Appendices attached hereto under the title "Construction Contract Requirements" (collectively, the "Construction Contract Requirements") and Borrower (if the Borrower acts as the "contractor" of the Work) shall comply with the Construction and Supply Contract Requirements. Each Construction and Supply Contract must comply with the federal labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis-Bacon Act may be verified through on-site inspections by representatives of the City or at the City's option, the Approved Inspectors. In addition, each Construction Contract must require compliance with labor standards under CDBG Regulations at 24 C.F.R. § 570.603 and Department of Labor regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.

6.2.6. Borrower's Insurance Requirements. Borrower shall and shall cause its contractors to maintain insurance with waiver of subrogation against the City, its predecessors, successors, assigns, legal representatives, and its former, present and future agents, employees and officers (the foregoing are collectively referred to herein as "City") and, except with respect to workmen's compensation, shall name the City as an additional insured party. The amounts, types, and other specifications of such insurance are described in the "Insurance Requirements" pages of the Appendices (although the Appendices contain the Insurance Requirements as of the Effective Date of this Agreement, the version of Insurance Requirements in effect for the City's General Conditions of Construction Contract at the date of Closing of the City's Loan shall

supersede the requirements set forth in the Appendices during the Approved Construction Period). Borrower shall also comply with all insurance requirements of any Senior Loan Documents. In the event of a conflict between the insurance requirements of the Senior Loan Documents and this Agreement, the stricter of the two requirements for each type of insurance shall control. Notwithstanding the foregoing, during any period of time when construction is ongoing, Borrower shall cause builder's risk insurance to be maintained by Contractor for those buildings at the Project undergoing construction in coverage amounts not less than the total respective amount of City provided funds and the Senior Loan that will be allocated to Work on those buildings.

6.2.7. Debarment, etc. No contractor or subcontractor shall be employed who is debarred or suspended by the City's Housing and Community Development Department, GLO, HUD, or any other federal, state or local governmental agency or program. The Debarment form included in the Appendices (or the Debarment form in effect at the time the form is required to be submitted to the Director) shall be furnished to the Director on or before the execution of this Agreement.

6.3. Reserved.

6.4. Reserved.

6.5. Reserved.

6.6. Inspections; Corrective Action.

6.6.1. During construction, the Work shall be subject to inspection by the City, GLO or at the City's option, any Approved Inspectors. Until Project Completion, in connection with every requested draw on the City Loan, Borrower shall provide the Director with an

inspection report in form and substance acceptable to Director from the Approved Inspectors meeting the requirements of Section Three, Paragraph 3.9.2.

6.6.2. Borrower agrees to promptly make any corrections or modifications to the Work as reasonably requested by the Director to cause the Work to comply with the terms of this Agreement, the inspection reports from the Approved Inspectors, the Approved Plans, Specifications and Drawings, the Approved Construction Schedule, and any applicable GLO requirements.

6.6.3. After the Certificate of Completion is issued and throughout the entirety of the Affordability Period, the City and/or GLO shall have the right to inspect or have the Project inspected by Approved Inspectors to ensure compliance with Applicable Law, this Agreement, the Restrictive Covenants and the other Loan Documents.

6.6.4. With respect to all of the City's and GLO's inspection rights (1) the City, GLO, Approved Inspectors and the City's authorized agents and independent contractors, and others acting on its behalf, shall have access to the Project at reasonable times for purpose of monthly inspections (2) each new or renewal lease of a unit within the Project shall include a clause that permits the City's Approved Inspectors and GLO access to inspect units at reasonable times (except in an emergency, when the inspection may be at any time); (3) neither the City nor GLO shall incur any liability to Borrower or any tenants as a result of such inspections; (4) the City does not guarantee the Work of the Contractor or any Subcontractor and the City shall not be liable in the event of the Contractor's or any Subcontractors' default, or for any damages caused by the Contractor, any Subcontractors, or their employees or agents.

6.6.5. Unless otherwise agreed or limited by the Director, Borrower shall provide the Director with copies of any and all reports (of any nature) provided to or prepared by (or for) the Senior Lender.

6.7. Reserved.

6.8. Designated Units; Compliance with Affordability Requirements.

6.8.1. The Director has determined that the number of Designated Units for the Project covered by this Agreement shall consist of sixty-six (66) units, being at least fifty-one percent (51.0%) of the total residential units in the Project, the location of which may float during the Affordability Period.

6.8.2. Reserved.

6.8.3. With respect to the Designated Units, Borrower shall comply with the following rent and income requirements determined in accordance with the Restrictive Covenants (collectively, the "Affordability Requirements"):

- (a) Each of the Designated Units shall be rented or be available for rent only to the City's LMI Persons, being those households whose gross income does not exceed eighty percent (80%) of the Area Median Income ("AMI"), as determined by HUD.
- (b) Designated Units shall be rent restricted based upon the following criteria:
 - (1) thirteen percent (13%) or nine (9) of the Designated Units shall be restricted to households at rents that do not exceed thirty percent (30%) of AMI.
 - (2) thirty-seven percent (37%) or twenty-five (25) of the Designated Units shall be restricted to households at rents that do not exceed fifty percent (50%) of AMI.

(3) fifty percent (50%) or thirty-two (32) of the Designated Units shall be restricted to households at rents that do not exceed sixty percent (60%) of AMI.

(c) The rental amount for each Designated Unit shall not exceed the applicable maximum rental limitations published annually by HUD for the low-income housing tax credit program, adjusted for household and unit size and applicable to the City, as such rental limitation is further described at 26 U.S.C. §§ 42(g)(2)(A) and (B).

6.8.4. The location of the Designated Units shall “float” within the Project. No later than ninety (90) days prior to the initiation of rental activities at the Project, Borrower shall contact the Director to establish a procedure for identifying the initial Designated Units to be occupied by qualified tenants and a procedure for identifying the floating Designated Units on a periodic basis thereafter. Floating Designated Units shall conform to the requirements of this Section and the Restrictive Covenants.

6.8.5. Reserved.

6.8.6. If the income of the tenant family occupying a Designated Unit increases above the threshold eligible AMI level as provided for in this Agreement and in the Restrictive Covenants, then the next available non-Designated Unit at the Project must be set aside for an eligible family, and that new unit then becomes a Designated Unit.

6.9. Annual Reevaluation of Rents. For purposes of monitoring compliance with the Affordability Requirements, Borrower shall, prior to the occupancy of any tenant in a Designated Unit and thereafter annually, submit to the Director for his approval, the rents proposed to be charged by Borrower for the coming year for Designated Units and the monthly allowances proposed by Borrower for the coming year for utilities and services to be paid by the tenant. In connection with Borrower’s annual submission of proposed

rents, Borrower shall reexamine the income of each tenant family living in a Designated Unit. Borrower shall calculate the maximum monthly rent in accordance with the Affordability Requirements, and such maximum monthly rent shall be reviewed and approved by the Director prior to the date that such rent becomes effective (“Approved Rents”). Any increase in the Approved Rents for Designated Units is subject to the provisions of the leases, in any event, and Borrower shall provide tenants not less than thirty (30) days prior written notice before implementing any increase in Approved Rents.

6.10. Compliance with Property Standards. Borrower shall, throughout the Affordability Period, maintain the Project in good condition and repair, ordinary wear and tear excepted, in accordance with the Minimum Property Standards. City shall have the right to inspect the Project from time to time to ensure compliance with such requirements, and may require Borrower to make any necessary repairs to comply with such requirements in a reasonable period of time; provided, however, any repairs to correct a dangerous condition or imminent hazard shall be commenced immediately upon notice of such dangerous condition or imminent hazard and prosecuted diligently to completion.

6.11. Tenant Lease Requirements. Prior to the date that Borrower enters into any new or renewal leases for Designated Units, the Director shall approve a form lease that shall be used for occupancy of the Designated Units. Borrower shall not make any modifications to such form lease without the Director’s prior written approval. Borrower shall enter into leases in such approved form with each tenant of a Designated Unit. The

term of each lease of a Designated Unit shall not be less than one year unless Borrower and the tenant mutually agree otherwise.

6.12. Reserved.

6.13. Tenant Selection Policy; Marketing. Borrower shall comply at all times with the approved Tenant Selection Policy and shall not amend the Tenant Selection Policy without the prior written approval of the Director.

6.13.1. Reserved.

6.13.2. Borrower shall not refuse to lease a Designated Unit to a prospective tenant because of the status of the prospective tenant as a holder of a certificate of family participation, rental voucher, or comparable tenant-based assistance document under any federal or state assistance program (unless such rental is in conflict with other applicable federal or state requirements).

6.14. Use of Project. During the Affordability Period, the Designated Units shall be used solely for the purpose of providing housing for the City's LMI Persons in accordance with the provisions of this Agreement, and for no other purpose. Borrower shall list the Project on the Houston Housing Authority's ("HHA") landlords list and shall notify HHA that the Designated Units are available for affordable housing.

6.15. Maintenance of Records; Financial and Operating Reports; Monitoring.

6.15.1. Borrower shall follow the recordkeeping requirements set forth in this Agreement or required by the Director, including to establish and maintain such records as may be necessary to facilitate review and audit by GLO or HUD of the City Loan in connection with the CDBG Regulations under 24 C.F.R. § 570.492 and 24 C.F.R. § 570.493. The Director, GLO

and/or HUD shall have the right to audit Borrower's books and record and compliance with this Agreement upon reasonable notice to Borrower.

6.15.2. Borrower shall provide to the Director: (a) quarterly balance sheets and operating statements for the Project not later than the thirtieth (30th) day of the month following the calendar quarter to which the statements relate; (b) monthly rent rolls for the Project not later than the tenth (10th) day of the following month which contain at a minimum the following information (or other information as the Director may from time to time require) which correctly reflects, as of the first (1st) of each month, for each Designated Unit: the unit number, the number of bedrooms, the tenant name, the effective lease date, the monthly rent and the unit status (i.e., AMI); (c) financial statements (balance sheet and operating statements) of Borrower, in a form acceptable to the Director, within one hundred twenty (120) days (for unaudited statements) and six months (for audited statements), if any, following the close of Borrower's fiscal years; and (d) prior to the termination of the Construction Completion Guaranty, annual financial statement (balance sheet and income/operating statement) within one hundred twenty (120) days (for unaudited statements) and six months (for audited statements) following the close of Guarantors' fiscal year. The annual financial statements of Borrower and Guarantor shall be audited by an independent certified public accountant upon the request of the Director. If the Director requires, Borrower shall provide such reports at different intervals.

6.15.3. Using the Monitoring Forms or other forms from time to time established for use by the Director for monitoring purposes of the Loan Proceeds or to document Borrower's compliance with the requirements of this Agreement, Borrower shall provide the Director with all monthly, quarterly or annual compliance reports as the Director requests.

6.15.4. The City shall have ownership of all information, including reports and data, prepared or assembled by Borrower for purposes of meeting CDBG-DR17 Program requirements and the contractual requirements of this Agreement; provided, however, Borrower may provide copies of such information to third parties.

6.15.5. Borrower shall, upon the request of the Director, make available to the City at the location of the Project (or at another location in Houston, Texas) all records, reports and other information and data maintained by Borrower relating to the Project, and shall cooperate with the City in connection with the City's review of such records and monitoring of the Project.

6.15.6. Borrower shall maintain all records and other information relating to the Project for a period of not less than five (5) years following the expiration of the Affordability Period.

6.15.7. Borrower shall pay an annual monitoring compliance fee to the City in the amount of Thirty and No/100 Dollars (\$30.00) per Designated Unit restricted herein.

6.16. Notice of Claims or Suits. Borrower shall give the Director prompt written notice of any causes of action, suits, or other proceedings filed or any claims made against the Project, Borrower or Guarantor, or, to the extent that it would have a material adverse effect on the Project, and Borrower has notice thereof, any other persons involved in the implementation or administration of the transactions contemplated by this Agreement.

6.17. Minority, Women and Small Business Enterprises. For purposes of this Paragraph 6.17, the term "Borrower" shall mean and include, collectively, Borrower and

its general contractor(s). In order to monitor Borrower's good faith efforts to adhere to the City's MWSBE's programs, Borrower shall maintain or cause its contractors to maintain records and submit periodic reports of its good faith efforts to the Director in the form and at the times prescribed by the City's designated OBO official and the **APPENDIX 9** requirements.

6.18. Transactions with Affiliates. Except as otherwise provided in this Agreement and/or in any of the other Loan Documents, during the Term of this Agreement or any of the Loan Documents, Borrower shall not enter into any transaction in connection with this Agreement with any director, officer, employee, partner, or affiliate of Borrower without the prior written approval of the Director. If the Land for the Project was acquired by Borrower from any director, officer, employee, partner, or affiliate of Borrower, the sales price for the Land may not have been any greater than most recent assessed value for ad valorem tax purposes, or the value set out in an independent appraisal report.

6.19. Taxes and Insurance. Borrower shall pay all applicable taxes for the Project before delinquency and all insurance premiums for the Project at least fifteen (15) days before the due date to prevent any lapse in coverage. Borrower shall at its option shall either: (1) fund an escrow account with Senior Lender for the payment of taxes and insurance premiums; or (2) provide the Director with written evidence acceptable to the Director that taxes and insurance premiums are paid prior to the date that such taxes and insurance premiums are due. To the extent that Borrower escrows funds with Senior Lender, Borrower shall provide the City with evidence of the adequacy of such escrows. Further, to the extent that Borrower fails to escrow funds with the Senior Lender, the

Director reserves the right to require Borrower to escrow funds for taxes and insurance premiums with the City.

6.20. HUD Section 3 Requirements. If applicable, Borrower shall comply at all times with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) as set forth and supplemented in the City's Housing and Community Development Department's Section 3 Plan and associated documents. Borrower shall report Section 3 compliance in accordance with 24 C.F.R. Part 135 and 83 Fed. Reg. 5844. Section 3 requirements are applicable to Borrower if the assistance provided for in this Agreement exceeds Two Hundred Thousand and No/100 Dollars (\$200,000.00), and to contractors and subcontractors for contracts or subcontracts that exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

6.21. Public Relations and Signage. All news releases and other public relations efforts, including advertising (except for advertisements solely for the purpose of obtaining tenants for the Project) and signage, must be approved in advance by the Director, and must properly refer to the City's Loan by the City and the City's Housing and Community Development Department.

6.22. Expertise. Upon request by the City, the City shall have the right to approve Borrower's intention to retain any person or firm for the purpose of constructing, leasing and managing the Project and Borrower shall provide evidence of the expertise and competence of such persons and firms that Borrower intends to engage for the purpose of constructing, leasing and managing the Project.

6.23. Compliance with Applicable Law.

6.23.1. Borrower shall acquire, repair/re-construct, lease, maintain and operate the Project, and conduct all activities under this Agreement in accordance with all applicable

federal, state, and local laws, rules, regulations and ordinances including, without limitation, the those included in the Appendices and specifically set forth in this Agreement, as they may be from time to time amended (collectively, the "Applicable Law").

6.23.2. Borrower will conduct all activities under this Agreement and the Loan Documents in accordance with Applicable Law.

6.23.3. Borrower acknowledges and agrees that all required lead-based paint and asbestos abatement will comply with all Applicable Law.

6.23.4. Borrower shall cause the Project and the Work to comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Architectural Barriers Act (42 U.S.C. §§ 4151-4157), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) ("Section 504"), and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time, the Texas Architectural Barriers Act, Tex. Gov't. Code Ann. § 469.001 et seq. (1994) and the regulations and guidelines promulgated thereunder, and Chapter 10, subsection 60 of the Texas Administrative Code and the regulations and guidelines promulgated thereunder ("Chapter 10") as all of the same may be amended and supplemented from time to time (collectively, "Accessibility Requirements"). Five percent (5%) of the total number of units at the Project (i.e. seven (7) units), disbursed throughout the Project, shall be designated accessible in accordance with Section 504 and Chapter 10 using the 2010 ADA Standards for Accessible Design, promulgated by the United States Department of Justice, found at 28 C.F.R. § 35.151 (2013) and 36 C.F.R. Part 1191, App. B and D (2013) (the "2010 ADA Standards") as modified by HUD. In addition, two percent (2%) of the units at the Project (i.e. three (3) units) shall meet the

standards to accommodate the hearing and visually impaired in accordance with Applicable Laws (as defined herein).

6.23.5. If applicable, Borrower shall comply with CDBG Regulations at 24 C.F.R. Part 570, the Uniform Relocation Assistance and Real Property Policies Act of 1970 (“URA”), as amended, at 49 C.F.R. § 24, and Section 104(d) of the Housing and Community Development Act of 1974, as amended, at 24 C.F.R. § 42. Borrower shall also comply with the tenant protection requirements set forth in the Protecting Tenants at Foreclosure Act of 2009, as amended and extended, (“PTAF”), as well as with any local codes or ordinances with respect to tenants’ rights or tenant protection. If required by Applicable Law, Borrower shall also comply with the Multifamily Relocation Requirements (“Multifamily Relocation Requirements”) in the Appendices and shall submit to the Director copies of all documentation required by the Multifamily Relocation Requirements or relating to URA, which may include, without limitation, (i) a certification or affidavit, unless waived by the Director, affirming Borrower has performed all appropriate due diligence in order to confirm compliance with the tenant protection requirements set forth herein, (ii) a Notice to Real Property Owner/Seller, (iii) Tenant Status Reports, (iv) all Notices with Tenant Acknowledgements as required by the URA and (v) other related forms described in the Multifamily Requirements. If required by Applicable Law, Borrower shall also submit to Director copies of all tenant notices and the Seller’s Occupancy Certification required under PTAF with respect to the tenant protection requirements, to substantiate that such notices, if required by Applicable Law, were provided either by the foreclosing lender or by Borrower.

6.24. Replacement Reserve and Operating Reserve. In accordance with the Senior Loan Documents, but not later than the first (1st) anniversary following Project

Completion, Borrower shall establish with Senior Lender, or to the extent not funded with the Senior Lender, a financial institution acceptable to the Director and Senior Lender in their sole and absolute discretion, and fund as an Operating Expense a “replacement reserve escrow account” (“Replacement Reserve Account”) for the replacement of furniture, fixtures, and equipment used in connection with those units at the Project for which the Work has been completed and for repair of capitalized improvements, in an amount not less than the greater of (i) Three Hundred and No/100 Dollars (\$300.00) per unit annually, increased by three percent (3%) annually, or (ii) the reserve required by the Senior Lender per Unit per annum. If the Senior Lender requires a Replacement Reserve Account meeting these requirements, no additional reserve shall be required by the City. The reserve shall be deposited in equal monthly installments on an amortized basis. (For example, if the Project had 100 Units, the monthly payment would be calculated as follows: $100 \text{ Units} \times \$300 \div 12 = \$2,500$ monthly escrow payment). In the event that the Senior Lender does not require a Replacement Reserve Account pursuant to the immediately preceding sentence, the City shall have the right to cause Borrower to fund such Replacement Reserve Account, in an annual amount not less than Three Hundred and No/100 Dollars (\$300.00) per unit, increased by three percent (3%) annually, in accordance with the terms of this Section Six, Paragraph 6.24. Unless a Default exists beyond the expiration of all applicable notice and cure periods, Borrower shall be entitled to utilize amounts in the Replacement Reserve Account as necessary, provided that Borrower shall replenish the amount withdrawn by continuing to fund deposits to the Replacement Reserve Account in accordance with the preceding sentence. Any replacement reserve amounts required under the Senior Loan Documents may be

applied toward satisfaction of the Replacement Reserve Account requirements in this Agreement. If the Replacement Reserve is not required by the Senior Lender, the Director may require that the Replacement Reserve Account and all amounts held therein shall be collaterally assigned to the City (and which may be collaterally assigned to Senior Lender and Subordinate Lender as well) pursuant to a pledge and account control agreement in form and substance acceptable to the Director in his or her sole and absolute discretion. If the Replacement Reserve is required by the Senior Lender, the City shall have a second lien priority interest in the Replacement Reserve Account and the funds contained therein. On an annual basis, Borrower shall provide the Director with an accounting of the Replacement Reserve Account. If not required by the Senior Lender or Borrower's Operating Agreement, the Director may require Borrower to establish an Operating Reserve for the Project at Project Completion on terms and conditions as approved by the Director.

6.25. Insurance Provisions in the Deed of Trust. Borrower shall comply with all insurance requirements set out in the Senior Mortgage, the Deed of Trust securing the City Loan and this Agreement.

6.26. Reserved.

6.27. Consulting and Developer's Fees. During the Term, without the prior written approval of the Director, no consulting or developer's fees shall be paid by Borrower, directly or indirectly out of the proceeds of the City's Loan or out of the revenue of the Project (except as provided in the Approved Final Construction Budget or the Approved Final Operating Budget).

6.28. Distributions Covenant. If the Project exceeds a debt service ratio of 1.5 to 1 on an annual (calendar year) basis, the available cash for distribution for such calendar year shall be limited to the cash available between breakeven (1:1 debt service ratio) and a 1.5 to 1 debt service ratio on the Senior Loan. Notwithstanding anything to the contrary contained in this Loan Agreement, any distribution in excess of such amount shall entitle the Director to declare a Default hereunder without prior notice and opportunity to cure. For example: If the debt service on the Project was One Hundred Thousand and No/100 Dollars (\$100,000) per year and the available cash before payment of debts was Two Hundred Thousand and No/100 Dollars (\$200,000), the Project would have a debt service ratio of 2:1. One Hundred Thousand and No/100 Dollars (\$100,000) of the cash would be used to pay debt service, Fifty Thousand and No/100 Dollars (\$50,000) (only) would be available for distribution and the remaining Fifty Thousand and No/100 Dollars (\$50,000) would be reserved by Borrower and promptly invested in the capital improvement of the Project or deposited in the Replacement Reserve Account. Cash flow in excess of a 1.5 to 1 debt service ratio shall not be available for distribution and shall be invested in the Project or deposited in the Replacement Reserve Account as provided above. Borrower covenants to notify the City in writing at least ten (10) days in advance of any distribution of Project income to Borrower's partners, shareholders or members as applicable.

6.29. Modification Fees. In the event that a modification of this Agreement or any change in any City Loan terms is required after Closing which requires the Director's or City Council's approval, Borrower shall be responsible for all costs in connection

therewith together a fee of no less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) with the amount of the fee to be determined at the time of request.

SECTION SEVEN
RESERVED

SECTION EIGHT
RESERVED

SECTION NINE
DISBURSEMENT PROCEDURES

9.1. Disbursement Limitations. The proceeds of the City Loan shall be disbursed only for eligible and approved costs of the Work, relocation costs or acquisition costs that (i) are included in the Approved Final Project Budget, (ii) have been approved by the Director, (iii) if for Work, are for Work that has been completed and which Work has been approved by the Director, and (iv) if for materials, are for materials purchased and stored on site and approved by the Director.

9.2. Retainage. Disbursement for the Work or other expenses under the Approved Final Construction Budget shall be subject to a ten percent (10.0%) retainage under Section 53.101, et seq. of the Texas Property Code (as it may be amended from time to time) and/or in accordance with the Approved Construction Contract, but notwithstanding the foregoing, in no case shall retainage be released prior to thirty (30) days following completion of the Work as certified by the Architect or other person acceptable to the City. At the time of the release of the retainage, the Project is or will be as a result of the release of retainage free of all liens relating to the Project, other than liens that are bonded around. At the time of the release of the retainage, Borrower shall provide the City with a down-date endorsement (T-3), final lien waivers and/or such other documentation as may be required by the Director.

9.3. Reallocation of Loan Proceeds. Any Loan Proceeds that are allocated for the Project but that are not expended for eligible costs under the Approved Final Project Budget pursuant to the terms of this Agreement shall be returned to the City for reallocation.

9.4. Reallocation of Savings and Contingencies. Borrower may, with the Director's approval, reallocate savings from one category of the Approved Final Construction Budget or from the contingency category of the Approved Final Construction Budget to another category of the Approved Final Construction Budget for the Project.

9.5. Drawdown Procedure. Borrower shall not request a disbursement of the Loan Proceeds except in accordance with the Approved Construction Schedule and Approved Final Project Budget and in accordance with the provisions of this Section Nine, Paragraph 9.5. When a disbursement of Loan Proceeds is requested, Borrower shall deliver to the Director (but in no event more often than once a month and for an amount of not less than Five Thousand and No/100 Dollars (\$5,000)) an application for the disbursement (in a form required by the Director) (the "Disbursement Request") together with supporting documentation required by the Director (which shall include but not be limited to invoices and draw requests submitted by Contractor, interim lien waivers using forms provided by the GLO attached hereto as **APPENDIX 13**, and monthly construction progress reports on a unit by unit basis for verification by a third party inspector or a representative of the City) and evidence of required permits. If the Director objects to an item (or portion thereof) included in any Disbursement Request or if all required information has not been submitted, then the Director shall notify Borrower within ten (10) business days of receipt of the applicable Disbursement Request of the Director's

objection and shall thereupon be relieved of any obligation to make a disbursement for that item (or portion thereof) until such time as Borrower cures the objection(s) to the satisfaction of the Director. If the Disbursement Request is otherwise complete (as determined by the Director) and provided no Default exists or event that with the passage of time or giving of notice would constitute a Default has occurred and is continuing, the City shall, within thirty (30) calendar days following receipt of Borrower's request, fund the requested disbursement from the City Loan less any amounts for items to which the Director has raised an objection and that have not been cured and less any retainage; provided, however, that the City shall not be required to make a disbursement (other than the last disbursement) in an amount less than Five Thousand and No/100 Dollars (\$5,000) nor shall the City be required to make more than one disbursement per month. With each draw, the Borrower shall provide a down-date endorsement (T-3) to the City Loan Title Policy together with partial lien releases from the Contractor and subcontractors for the Work performed through the date of the draw request. Notwithstanding the foregoing, the Director may waive any requirement of this Paragraph 9.5, provided each Disbursement Request complies with: (i) Section 4.4 of the Intercreditor Agreement, (ii) Section Six, Paragraphs 6.1 and 6.2 hereof, and (iii) the 2021 Subrecipient Agreement, CDBG Regulations and Other Requirements.

SECTION TEN **DEFAULT AND REMEDIES**

10.1. Default. The Director may declare a default ("Default") under this Agreement or any one or more of the Loan Documents upon the occurrence of any one or more of the following circumstances that is continuing beyond the expiration of all applicable notice and cure periods (and in all events, subject to the rights of Senior Lender under the Senior

Loan Documents, Subordinate Lender under the Intercreditor Agreement, and Tax Credit Investor under Section Ten, Paragraph 110.3.3 hereof):

10.1.1. Failure to Pay. If Borrower fails to pay, when due, any portion of the indebtedness evidenced by the Note and/or Loan Agreement and such failure continues for ten (10) days after written notice thereof from the Director to Borrower.

10.1.2. Breach of Affordability Requirements and/or Restrictive Covenants. If Borrower breaches (i) the Affordability Requirements in this Agreement or the parallel Affordability Requirements set forth in the Restrictive Covenants and such breach continues for thirty (30) days after written notice thereof from the City to Borrower or (ii) any other covenant, condition, representation or warranty contained in the Restrictive Covenants, provided, however, that if the Restrictive Covenants do not provide a cure period, Borrower shall not have cure rights hereunder.

10.1.3. Breach of Other Covenants or Conditions. Except for the breaches of covenants or conditions covered by Section Ten, Paragraphs 10.1.1 and 10.1.2 above, if Borrower fails, refuses or neglects to perform fully and timely any obligation, or breaches any covenant or condition (including any condition prior to or subsequent to the issuance of the City Loan) under this Agreement, or under any other Loan Document, and such failure continues for thirty (30) days after written notice from the City to Borrower, or, if the failure is not susceptible to cure within said 30-day period, such greater period of time (not to exceed sixty (60) days) as is necessary to cure such failure provided Borrower commences to cure such failure within said 30-day period and diligently works to cure such failure; provided, however that in the event that (i) any such cure periods would cause a violation to occur under Applicable Law or cause a recapture of the tax credits or (ii) any breach or failure of performance of a life safety

requirement, such event shall be deemed a Default hereunder without any notice or opportunity to cure;

10.1.4. Breach of Representations or Warranties. If any representation or warranty made by Borrower in its application(s) for the City Loan or in any of the Loan Documents, or this Agreement, or the Restrictive Covenants is false or misleading in any material respect, provided, however, that solely with regard to non-financial misrepresentations or warranties, Borrower shall have thirty (30) days after written notice to the Borrower from the City in which to take such action as may be necessary to cause the matter or thing represented to become true or not misleading; provided, however that in the event that any such cure periods would cause a violation to occur under Applicable Law or cause a recapture of the tax credits, such event shall be deemed a Default hereunder without any notice or opportunity to cure.

10.1.5. Voluntary Actions. If Borrower or Guarantor (if any) is voluntarily adjudicated bankrupt, seeks, consents or does not contest the appointment of a receiver or trustee for itself or for all or part of its property, makes a general assignment for the benefit of creditors, does not pay its debts as they become due, or files a petition seeking relief under United States Bankruptcy Law.

10.1.6. Involuntary Actions. If a petition is filed against Borrower or Guarantor (if any) under United States Bankruptcy Law or if a court of competent jurisdiction enters an order appointing a receiver or trustee for Borrower or Guarantor (if any) for all or any material part of such party's property, and the order or petition is not discharged, dismissed or stayed within a period of ninety (90) days.

10.1.7. Dissolution or Liquidation. If Borrower is a partnership, limited liability company, corporation or other legal entity and dissolves, liquidates, or merges with or is consolidated into any other entity without the written approval of the Director.

10.1.8. Destruction of the Project. If the Project is demolished, destroyed or substantially damaged, and it is not restored or rebuilt in accordance with the requirements of the Loan Documents.

10.1.9. Cessation of Work. If Work on the Project ceases for ninety (90) or more consecutive days unless such cessation of Work is caused by cessation of funding under the City Loan.

10.1.10. Failure to Obtain or Default Under Other Financing. If Borrower fails to obtain any funding of the Other Financing in the order required under the Intercreditor Agreement (if applicable) or if Borrower has been declared in default under any regulatory agreement or document evidencing or related to the Other Financing, and such failure and/or default is not cured within ten (10) business days, or if longer, the cure period set forth in such regulatory agreement or other document but not to exceed thirty (30) days; provided, however, that any cure of the underlying default shall also constitute acceptable cure of the Default.

10.1.11. Liens and Other Encumbrances. If any mechanics', materialman's or other similar lien or encumbrance is filed against the Project, or the fixtures, materials, machinery and equipment to be used in the Project or other collateral that secures the City Loan, and the same is not discharged (by payment, bonding, which may include payment

bond furnished by contractor, or otherwise) within fifteen (15) business days following written notice thereof from the City to Borrower.

10.1.12. Change of Ownership or Management. If all or any part of Borrower's interest in the Project is transferred (excluding transfers of membership or partnership interests in Borrower to or by the Original Tax Credit Investor (or any entity permitted pursuant to Section Ten, Paragraph 10.1.15) or by its members or partners holding less than forty-nine percent (49%) ownership interest in Borrower, unless such interests being transferred are general partner or managing interests), sold or assigned, voluntarily or involuntarily, or there is a change of management of the Project, at any time within the Affordability Period, such transfer of interest or change of management must first be approved in writing by the Director, which approval may be granted or withheld by the Director in his or her reasonable discretion. In the case of a transfer of Borrower's interest in the Project, the Director's consent, if any, shall not be effective unless or until the purchaser or transferee assumes in writing all obligations and covenants of Borrower under the Loan Documents in a form acceptable to the Director and the City Attorney. If there is otherwise a change in control of Borrower without Director's consent, such change shall be in violation of this Agreement. If there is a change in the Property Manager without Director's consent, which consent shall not be unreasonably withheld, such change shall be in violation of this Agreement.

10.1.13. Failure to Complete. If Borrower fails to complete the Work in accordance with the Approved Plans, Specifications, and Drawings that are approved by the Director within the Approved Construction Period.

10.1.14. GLO, IRS or other Audit Findings or Exceptions. If the GLO, the Internal Revenue Service, or other federal or state agency makes an audit finding or exception that relates to the Project, the funds provided under this Agreement, or the Other Financing, provided, however, that if the audit finding or exception is curable, there shall be no Default unless the audit finding or exception is not cured within thirty (30) days after written notice to Borrower of such finding or exception or for such greater period as shall be necessary to cure such finding or exception so long as Borrower commences to cure such finding or exception within thirty (30) days after written notice thereof to Borrower and satisfactorily completes such cure.

10.1.15. Removal of Borrower's Managing Member. Notwithstanding anything to the contrary contained in this Agreement, the removal and/or replacement of Borrower's managing member for cause in accordance with Borrower's Operating Agreement shall not require the consent of the City or Director, shall not constitute a default under this Agreement or accelerate the maturity of the City Loan. The consent of the Director shall be required for the appointment of a new managing member, but if the Tax Credit Investor exercises its right to remove the Borrower's managing member for cause, City will not unreasonably withhold its consent to the substitute managing member; provided however, the consent of neither the City nor the Director shall be required if the substitute managing member is an affiliate of the Tax Credit Investor. . The substitute managing member shall assume all of the rights and obligations of the removed managing member of Borrower hereunder.

10.2. Temporary Non-Compliance Not a Default. Notwithstanding the foregoing or any other provision of this Agreement or any of the other Loan Documents to the contrary, Borrower shall not be in Default hereunder or thereunder if such Default occurs

solely as a result of temporary non-compliance with Section Six, Paragraphs 6.8.1, 6.8.3 or 6.8.4, or comparable or similar provisions of this Agreement or any of the other Loan Documents, and such temporary non-compliance is caused by increases in incomes of existing tenants, provided that actions satisfactory to GLO and the City are being taken to ensure that all vacancies are filled with eligible tenants until the non-compliance is corrected. Without limiting the foregoing, existing tenants of Designated Units whose financial status during the term of the lease are found to be such as to no longer qualify such tenants as City LMI Persons, must pay as rent from the date any such tenant no longer qualifies as a City LMI Person, an amount equal to the lesser of the amount payable by the tenant under state or local law or thirty (30%) percent of the family's adjusted monthly income, as re-certified annually, but in no event shall more rent be charged than is allowed under Section 42 of the Internal Revenue Code.

10.3. Right to Cure. Any time there is an event or a condition described in Section Ten, Paragraph 10.1 which, with the passage of time might become a Default, if the Project has received Other Financing from low income housing tax credits, the Tax Credit Investor, the Subordinate Lender, and/or the Senior Lender shall have the independent and concurrent right to cure such event or condition during the same period of time as that provided to Borrower. A cure by the Tax Credit Investor, Subordinate Lender, and/or the Senior Lender of any event or condition that, with the passage of time might become a Default, shall have the same effect as a cure of such event or condition by Borrower.

10.4. Reserved

10.5. City's Remedies. Upon the declaration of a Default by the Director and the failure by Borrower or Senior Lender, Subordinate Lender, or Tax Credit Investor to cure

same within a time period specified herein (if any), the Director may in his or her sole discretion: (i) terminate this Agreement; (ii) accelerate payment of the Note and declare that all sums under the City Loan are immediately due and payable; (iii) foreclose on the Project; (iv) cease funding any disbursements under the City Loan ; (v) foreclose on the Collateral Note and/or (vi) take any other action authorized or available under this Agreement, any of the Loan Documents or under Applicable Law or in equity. In the event a Default exists beyond the expiration of all applicable notice and cure periods, if the Director so chooses this remedy, the outstanding deferred principal balance shall be immediately due and payable. Upon the occurrence and continuation beyond the expiration of all applicable notice and cure periods of any Default hereunder, the deferred principal shall bear interest at a rate of the lesser of ten percent (10%) per annum or the maximum rate of interest permitted to be contracted for by Applicable Law (“Highest Lawful Rate”). Failure of Borrower to adequately perform under this Agreement may result in penalties including the possibility of disbarment from future GLO and City projects. In the event that the City elects to stop funding the City Loan upon the occurrence and continuance of a Default beyond the expiration of all applicable notice and cure periods, the Borrower shall be obligated to continue and complete the Work at Borrower’s expense.

SECTION ELEVEN
ALLOCATION OF COST SAVINGS
AND RECOVERY OF DAMAGES FROM CONTRACTOR

In the event that (i) cost savings are achieved in connection with the performance of the Work and not re-allocated in accordance with Section Nine, Paragraph 9.4 or (ii) the Contractor or any Subcontractor selected to perform the Work on the Project makes a payment of damages to Borrower for delays, defective workmanship or material, or for other items related to Work on the

Project and such sums are not used by Borrower to correct such defective workmanship or otherwise mitigate any damages related to Work on the Project resulting from such default by the Contractor or any Subcontractor, Borrower shall immediately pay to the City a portion of such cost savings or the sum received as payment of damages, to be applied against the principal balance of the City Loan. The amount of such savings or damages to be paid to the City and applied to the City Loan shall be equal to:

- (i) (The total amount of the City Loan disbursed for Work) X (amount of cost savings realized or damages received) (The total Work cost)
- (ii) less any portion of the damages received that the Director determines are attributable to lost income from rent; and
- (iii) less any portion of the cost savings realized or damages received that are used to pay Work costs approved by the Director in accordance with the Final Budget.

Provided, however, to the extent that cost savings result in reduction in eligible basis for the Project and such reduction results in the amount of equity being contributed to the Project by the Tax Credit Investor being reduced, the City Loan shall not be reduced by any amount of reduction in the Tax Credit Investor's equity.

SECTION TWELVE
RESERVED

SECTION THIRTEEN
RESERVED

SECTION FOURTEEN
RELEASE AND INDEMNIFICATION

14.1. RELEASE. BORROWER, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "BORROWER") HEREBY RELEASE, RELINQUISH AND DISCHARGE THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS,

LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FROM ANY LIABILITY AS A RESULT OF THE JOINT NEGLIGENCE OF THE CITY AS A RESULT OF ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH THIS AGREEMENT.

14.2. INDEMNIFICATION AGREEMENT. BORROWER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH BORROWER'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF BORROWER IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. ALSO, DURING THE PERFORMANCE OF THE WORK AND UP TO A PERIOD OF FIVE (5) YEARS AFTER THE DATE OF FINAL ACCEPTANCE OF THE WORK, BORROWER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY

AND BORROWER, WHETHER BORROWER IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY BORROWER TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF BORROWER.

SECTION FIFTEEN
NOTICE

All notices, demands, certificates, or other communications hereunder shall be in writing and shall be deemed sufficiently given or served for all purposes when delivered personally, by courier or via overnight delivery, when sent by certified or registered mail, postage prepaid, return receipt requested or by private courier service, in each case, with the proper address as indicated below; provided that any such notices, demands, certificates, or other communications shall be deemed delivered on the date delivered, or if mailed, three (3) days after deposit in the U.S. mail. Where an email address is indicated below, notice shall also be sent to the applicable party both by email as well as one of the other designated forms of notice, but notice by email alone shall not satisfy the notice delivery requirements of this Agreement. Each party may, by written notice

given to the other parties, designate any other address or addresses to which notices, certificates or other communications to them shall be sent as contemplated by this Agreement. Until otherwise so provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

TO THE CITY: City of Houston
c/o Housing and Community Development Department
2100 Travis, 9th floor
Houston, TX 77002
Attention: Director

With a copy to: City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Disaster Recovery

With a copy to: Housing and Community Development Department
2100 Travis, 9th floor
Houston, TX 77002
Attention: Asia Speights
E-mail: Asia.Speights@houstontx.gov

TO BORROWER: Houston DMA Housing II, LLC
4101 Parkstone Heights Drive, Suite 310
Austin, TX 78746
Attention: Janine Sisak, SVP / General Counsel

With a copy to: Coats Rose, P.C.
2700 Via Fortuna, Terrace 2, Suite 350
Austin, TX 78746
Attention: Scott A. Marks
E-mail: smarks@coatsrose.com

With a copy to: RBC Community Investments, LLC
600 Superior Avenue, Suite 2300
Cleveland, OH 44114
Attention: General Counsel

And a copy to: Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, IL 60605
Attn: Bennett P. Applegate

TO SENIOR LENDER: Capital One, N.A.
299 Park Avenue, 14th Floor
New York, New York 10171

SECTION SIXTEEN
RESERVED

SECTION SEVENTEEN
RESERVED

SECTION EIGHTEEN
MISCELLANEOUS

18.1. Relationship of Parties. The relationship of the City to Borrower pursuant to this Agreement, the Note, and all other Loan Documents is that of lender to borrower. Neither this Agreement, the Note, nor any of the Loan Documents creates any partnership, joint venture, or other sub recipient or fiduciary relationship between City and Borrower.

18.2. Parties in Interest. Except for the rights of GLO specifically set forth herein, this Agreement shall not bestow any rights upon any third party, but, rather, shall bind and benefit the City and Borrower, and as applicable, benefit GLO. Neither the U.S. Government, HUD, any subcontractor or supplier, nor any other person or entity, is a party to or a third-party beneficiary of this Agreement.

18.3. Exculpation. The City shall not be liable to Borrower or responsible in any manner to any third-party in connection with this Agreement.

18.4. Non-waiver. Failure or forbearance of any party hereto to insist on the strict performance of any obligation under this Agreement or to exercise any rights or remedies accruing upon default shall not be considered a waiver of the right to insist on and to enforce, by any appropriate remedy, strict compliance with any other obligation or to

exercise any right or remedy occurring as a result of any future default or failure of performance.

18.5. Modification. Any alterations, additions, or deletions to terms which are required by changes in federal or state laws and regulations shall be automatically incorporated into this Agreement and shall take effect on the effective date of the laws or regulations.

18.6. Severability. In the event that any covenant, condition or provision of this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of the invalid covenant, condition or provision shall in no way affect any other covenant, condition, or provision, provided that the respective rights and obligations of the parties contained in the valid covenants, conditions and provisions of this Agreement are not materially prejudiced.

18.7. Choice of Law. This Agreement shall be performable and enforced in Harris County, Texas, and shall be construed and interpreted in accordance with the laws of the City, the State of Texas and other Applicable Law. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

18.8. Integration. Except as may be otherwise provided in this Agreement, this Agreement, the Appendices, Attachments, and Exhibits, or the other Loan Documents and Borrower's response to the City's request for proposal embody the entire agreement between the City and Borrower and there are no other effective agreements, representations or warranties between the City and Borrower in connection with this Agreement and the other Loan Documents.

18.9. Assignability. This Agreement shall not be assignable in whole or in part by Borrower without the prior written consent of the City which consent shall be in the form of an ordinance passed by City Council.

18.10. Survival. All the terms of this Agreement (including without limitation, the conditions listed in Section Three) shall survive the execution of the Note, the Deed of Trust and Restrictive Covenants. The parties hereto expressly agree and acknowledge that the terms of this Agreement and the Restrictive Covenants shall remain in full force and effect until the expiration of the Affordability Period, notwithstanding whether the Note is prepaid in accordance with its terms.

18.11. Captions. The use of captions in this Agreement is for convenience only and such captions shall not be used to define or limit the terms of this Agreement.

18.12. Applicable Law. The interpretation and application of this Agreement shall be in accordance with the laws of the City, the State of Texas and other Applicable Law.

18.13. Multiple Counterparts; Effective Date. The parties have executed this Agreement in multiple originals, each having full force and effect, as of the Effective Date.

18.14. Approval by the City or the Director. All references to “reasonable” with respect to the granting or denying of the City’s or the Director’s approval shall be deemed to be “reasonable” if the Director is acting in his or her official capacity in accordance with the City’s Charter and related ordinances.

18.15. Transfer of Property: Flood Insurance. As applicable, during the term of this Agreement, Borrower shall maintain flood insurance as required under the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 (42 U.S.C.

§ 4001 et seq. and 42 U.S.C. § 5154a), as amended, in accordance with **APPENDIX 2** hereto or as otherwise required by HUD, City ordinance or the Director. Provided, however, that if the Property is located within a one hundred (100)-year or five hundred (500)-year floodplain or Special Flood Hazard Area designated by FEMA, Borrower must maintain flood insurance on the Property for the life of the Property, in accordance with 42 U.S.C. §4012a, and this requirement shall survive the expiration or earlier termination of this Agreement. Borrower understands and acknowledges that failure to maintain the required flood insurance shall result in ineligibility for any further federal disaster relief of any kind, including but not limited to CDBG disaster recovery assistance. If the Property is sold or transferred by Borrower or any subsequent transferring owner, the applicable flood insurance requirements under this Section are transferred to the new Property owner. Borrower or any subsequent transferring owner of the Property must notify the new owner in accordance with 42 U.S.C. § 5154a and this requirement shall survive the expiration or earlier termination of this Agreement. Borrower or any subsequent transferring owner of the Property may be subject to liability if it fails to provide the notice required by 42 U.S.C. § 5154a.

18.16. Consents and Approvals. Any approval or consent required of the City or the Director under the Loan Documents is for the purposes of administering the City Loan for City's benefit only and does not constitute any type of warranty or guaranty to Borrower that the plans, specifications, contracts or items of a similar nature for which approval or consent is sought is free from error, in compliance with Applicable Law or fit for the Borrower's purpose. Borrower acknowledges that neither the City nor the Director is an engineer or an architect and that Borrower is required to rely on its own architect,

contractors and engineers in performance and monitoring of the Work hereunder. To the extent that any condition or provision of this Agreement or any other Loan Document is subject to the approval or consent of the City or the Director and such consent is not expressly required to be "reasonable", such consent or approval may be granted or denied within the sole and absolute discretion of the City or the Director, as applicable. In all cases, any approval or consent required by the City or Director shall not be effective unless such consent or approval is in writing.

18.17. Choice of Venue. Borrower agrees that proper and exclusive venue for any dispute with respect to this Agreement shall be in the United States District Court for the Southern District of Texas or the state district court sitting in Harris County, Texas, and Borrower agrees to waive any claim that such court does not have personal jurisdiction over it or is an inconvenient forum.

18.18. Mediation of Contractor Disputes. In the event that a dispute arises between Borrower and any contractor or subcontractor or between any contractor and subcontractor with respect to the Work or the Project, the Director shall have the right to require the disputing parties to conduct non-binding mediation to attempt to resolve such disputes to the extent that such mediation would not conflict with the requirements of the Payment, Performance or Maintenance Bonds. Such mediation shall occur within thirty (30) days of notice by the Director that a mediation is required. The Director may declare a default under the City Loan if any dispute referred to mediation is not resolved within sixty (60) days after submission to non-binding mediation. Each contract and subcontract for the construction of the Project shall contain mandatory non-binding mediation requirements in case of a dispute if mediation is required by the Director as well as the

other requirements of **APPENDIX 3** hereto. Nothing contained in this Agreement is intended to require the City to be a party to or participate in any mediation proceedings.

18.19. Force Majeure. In the event that any party shall be delayed in or prevented from the performance of any act required under this Agreement by reason of an event of Force Majeure, the time for performance shall be extended by the number of days that performance was reasonably delayed by such event provided that such extension shall not be permitted if such extension results in the breach of the GLO Contract.

18.20. Anti-Boycott of Israel. To the extent the prohibition contained in Chapter 2271 of the Texas Government Code applies to this Agreement, Borrower certifies that Borrower is not currently engaged in and agrees for the duration of this Agreement not to engage in the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

18.21. Zero Tolerance Policy for Human Trafficking and Related Activities. The requirements and terms of the City's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Borrower has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's Effective Date. Borrower shall immediately notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Borrower or its subcontractors providing services or goods under this Agreement.

18.22. Anti-Boycott of Energy Companies. To the extent the prohibition contained in Chapter 2274, "Prohibition on Contracts with Companies Boycotting Certain Energy

Companies”, of the Texas Government Code applies to this Agreement, Borrower hereby certifies that neither Borrower nor any contractor of Borrower are engaged in and that for the duration of this Agreement they will not engage in the boycott of energy companies as defined in Section 809.001 of the Texas Government Code.

18.23. Anti-Boycott of Firearm Trade Associations. To the extent the prohibition contained in Chapter 2274, “Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries”, of the Texas Government Code applies to this Agreement, Borrower hereby certifies pursuant to Texas Government Code Section 2274.002 that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and that it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

18.24. Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Borrower hereby certifies that neither Borrower nor any wholly owned subsidiary, majority owned subsidiary, parent company, affiliate or contractor of Borrower is a company or other entity listed by the Texas Comptroller of Public Accounts under Section 2252.153 or 2270.0201 of the Texas Government Code as a company or other entity known to have contracts with or provide supplies to a foreign terrorist organization.

SECTION NINETEEN **AUTHORITY OF THE DIRECTOR AND MAYOR**

19.1. Authority of the Director to Extend Time of Performance. The Director may extend the time of performance for any of Borrower’s covenants or conditions set forth in this Agreement, including all exhibits and attachments, or the other Loan Documents two (2) times for up to six (6) months each by written notice to Borrower. After these two six

(6) months extensions, the next extension must be obtained by formal amendment to this Agreement, approved by City Council. After the extension approved by City Council, the Director may extend this Agreement (as amended) or any applicable time period for up to two (2) additional six (6) month periods by written notice to Borrower, but any additional extensions thereafter must be approved by City Council. Director may not extend the Maturity Date of the City Loan or otherwise amend or extend any repayment obligations under the Note except through Renewal Periods described in Section One, Paragraph 1.C of this Agreement.

19.2. Authority of the Director to Execute Certain Amendments. In the event that change orders, the application of delay damages, or other actions permitted by this Agreement, including all exhibits and attachments, cause the principal amount of the City Loan to decrease, the Director shall have the authority to execute the appropriate amendments to the Loan Documents reflecting such decrease.

19.3. Authority of the Mayor to Execute Other Documents. The Mayor shall have the authority, without further action by City Council, to execute all other documents contemplated by this Agreement, including all exhibits and attachments, or necessary or appropriate to effectuate this Agreement, or to protect the City's interests hereunder, including, and without limitation, execution of the Intercreditor Agreement (and each agreement attached and incorporated into the Intercreditor Agreement in substantially the form of the attachment or as otherwise approved by the City Attorney). The Mayor shall have the authority, without further action by City Council and upon the recommendation of the Director and City Attorney, to make changes to clarify, but not materially change,

any provisions of this Agreement, including all exhibits and attachments, or other documents contemplated by this Agreement.

19.4. Schedules, Attachments, Appendices and Exhibits. References in this Agreement to various Schedules, Attachments, Appendices, or Exhibits shall refer to substantially the same form as those that are attached to this Agreement or such other form of Schedule, Attachment, Appendix or Exhibit as may be approved by the City Attorney and the other parties hereto.

19.5. Other Amendments; Council Approval Required. Except as otherwise provided in these Sections Nineteen, Paragraphs 19.1, 19.2, 19.3 and 19.4, any amendments to the Loan Documents must be in writing and authorized by City Council.

19.6. Refinance of Senior Loan. The Senior Loan, except for conversion of the Construction Senior Loan to the Permanent Senior Loan, may not be refinanced except as may be approved in writing by the Director, which consent shall not be unreasonably withheld.

SECTION TWENTY **USURY LIMITATIONS**

No provision of this Agreement, the Note, or any instrument securing payment of or relating to the indebtedness of Borrower, shall require the payment or permit the collection of interest in excess of the Highest Lawful Rate. If any excess of interest in such respect is herein or in any other instrument provided for, or shall be adjudicated to be so provided for herein or in any other instrument, the provisions of this paragraph shall govern and neither Borrower nor any guarantor or endorser of the Note, or their respective heirs, personal representatives, successors, or assigns shall be obligated to pay such interest to the extent it is in excess of the Highest Lawful Rate. Any fees or other sums that under Applicable Law are deemed to constitute interest shall be

treated as interest and taken into account in calculating the Highest Lawful Rate and all such fees or other sums so deemed interest shall be amortized, prorated, allocated and spread in equal parts over the full stated Term of the City Loan . It is the intention of the City and Borrower to conform strictly to the laws applicable to the City Loan, and should it be held that interest or other sums payable to the City under this Agreement, the Note, or any other Loan Document are in excess of the Highest Lawful Rate, the interest chargeable shall be reduced to the maximum amount permitted by law.

IN WITNESS WHEREOF, the parties execute this Agreement in multiple counterparts as of the date of countersignature by the City Controller as set out below.

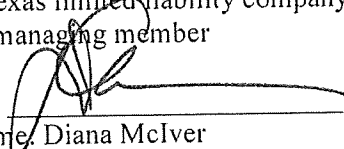
[SIGNATURE PAGES FOLLOW]

Loan Agreement Signature Pages


BORROWER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

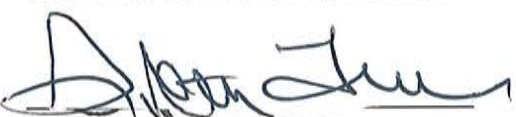
By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: 
Name: Diana McIver
Title: Manager


SEAL/ATTEST:


Pat Jefferson Daniel, City Secretary

CITY OF HOUSTON, TEXAS


Sylvester Turner, Mayor

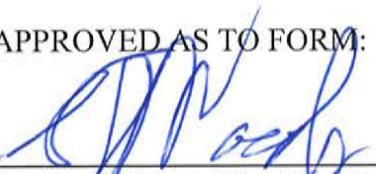
APPROVED:


Keith W. Bynam, Director
Housing and Community Development
Department

COUNTERSIGNED:


Chris B. Brown, City Controller

APPROVED AS TO FORM:


Senior Assistant City Attorney
LD# 0292000914001

COUNTERSIGNATURE DATE:

11/14/2022

SCHEDULE A

DEFINITIONS

Accessibility Requirements are defined in Section Six, Paragraph 6.23.4.

Affordability Period for the Project shall mean forty (40) years from Project Completion determined without regard to the Term of the Loan, the Deed of Trust, or the transfer of ownership of the Project and as may be renewed or extended as provided herein.

Applicable Law is defined in Section Six, Paragraph 6.23.1.

Approved Construction Schedule is defined in Section Three, Paragraph 3.4 hereof.

Approved Construction Contract is defined in Section Three, Paragraph 3.10.1 hereof.

Approved Final Construction Budget is defined in Section Three, Paragraph 3.9.2 of this Agreement.

Approved Final Operating Budget shall mean the portion of the approved Final Budget which relates to the operation and the Operating Expenses of the Project, which shall be updated and approved annually during the Term of the City Loan in accordance with the provisions of Section Three, Paragraph 3.9.1.

Approved Final Project Budget is defined in Section Three, Paragraph 3.9.2 of this Agreement.

Approved Inspectors is defined in Section Three, Paragraph 3.9.2 of this Agreement.

Approved Plans, Specifications and Drawings is defined in Section Three, Paragraph 3.3 hereof.

Assignment of Construction Contract shall mean that certain Assignment and Subordination of Construction Contract (with Consent) in form attached hereto as an Attachment or otherwise approved by the City Attorney.

C.F.R. shall mean the Code of Federal Regulations.

Certificate of Completion shall mean the certificate that is executed by the Director that states that Project Completion has occurred in accordance with the requirements of this Agreement.

Certificate of Compliance/Occupancy shall mean the certificate that is issued by the City acknowledging that construction has been completed and/or that the structure is ready for occupancy. Note: for rehabilitation Projects, this certificate may be termed a Certificate of Compliance.

City is defined in the preamble to this Agreement.

City Attorney shall mean the City Attorney of the City of Houston or any Assistant City Attorney that the City Attorney may designate to perform the various functions assigned to the City Attorney under this Agreement.

City Controller shall mean the Controller of the City of Houston or any other person the Controller may designate to perform the various functions assigned to the Controller under this Agreement.

City Loan or City's Loan shall mean the performance-based loan contemplated by this Agreement, in the maximum principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00) made by the City to Borrower for the purpose of financing eligible costs to construct the Project.

Closing or Closing Date shall mean the date on which the Loan Documents are executed and all of the other conditions set forth in Section Four of this Agreement have been satisfied.

Construction Contract shall mean the contract between Borrower and the Contractor to perform the Work (in form approved by the Director).

Construction Senior Lender shall mean Capital One, National Association.

Construction Senior Loan shall mean that certain loan in the amount of up to Sixteen Million and No/100ths Dollars (\$16,000,000.00) to be made as of the date hereof by Construction Senior Lender.

Contractor shall mean a contractor as approved by the Director selected by the Borrower to perform the Work. The Contractor must be registered and in good standing in his or her profession under the laws of the State of Texas and must be acceptable to the Director.

Conversion Date shall mean the date that Permanent Senior Lender makes the Permanent Senior Loan in accordance with the Permanent Senior Loan commitment and the Construction Senior Loan is repaid with proceeds from the Permanent Senior Loan.

Cost Reasonableness Analysis shall mean an evaluation of the separate elements (e.g., labor, materials, etc.) that make up the Approved Final Construction Budget to determine if they are allowable, directly related to the Work and ultimately, reasonable.

Deed of Trust shall mean and include the Deed of Trust, Security Agreement and Financing Statement to be executed by Borrower, granting to the City a second lien on Borrower's fee interest in the Project and which shall be substantially in the form attached as an Attachment to this Agreement.

Default shall mean the occurrence of any event set forth under Section Ten of this Agreement.

Designated Units shall mean those 66 units in the Project which have been designated by Borrower and approved by the Director as subject to all occupancy, rent, and affordability requirements of this Agreement and the Restrictive Covenants. The Designated Units shall remain

in compliance with the requirements of this Agreement without regard to the term of any mortgage or the transfer of ownership, pursuant to the Restrictive Covenants.

Director shall mean the Director of the City's Housing and Community Development Department or any other person that the Director may designate to perform the various functions assigned to the Director under this Agreement.

Effective Date shall mean the date this Agreement is countersigned by the City Controller.

Environmental Mitigation is defined in Section One, Paragraph L of this Agreement.

Environmental Review is defined in Section One, Paragraph L of this Agreement.

Final Budget shall mean, collectively, the Approved Final Operating Budget and the Approved Final Construction Budget.

Financing Statements shall mean U.C.C.-1 Financing Statements granting a second lien security interest in Borrower's personal property included within the definition of the Project.

Force Majeure means an event of storm, flood, fire, earthquake or other acts of god, war, terrorism, sabotage, riot, insurrection or other civil disturbance, strikes, lockouts or other labor disturbances which renders a party temporarily incapable of performance.

Governmental Authority shall mean the United States, each state, each county, each city, and each other political subdivision in which all or any portion of the Land is located, and each other political subdivision, agency, or instrumentality exercising jurisdiction over the City, Borrower, and/or the Land.

Guarantor shall mean DMA Development Company, LLC.

Highest Lawful Rate is defined in the Section Ten, Paragraph 10.5 of this Agreement.

HUD shall mean the United States Department of Housing and Urban Development.

Income and/or Family Income or any similar term, including without limitation, annual income, adjusted income, monthly income, and monthly adjusted income shall have the meanings assigned to such terms in 24 C.F.R. Subtitle A Part 5.

Intercreditor Agreement shall mean the agreement, including but not limited to the subordination agreements referenced and attached to the agreement, between the City, Borrower, Subordinate Lender, Permanent Senior Lender and Construction Senior Lender described in Section Three, Paragraph 3.8 of this Agreement.

Land shall mean the real property included within the Project, as described in Section Two, Paragraph 2.1 of this Agreement.

LMI Persons shall mean low- or moderate-income households whose annual incomes do not exceed eighty (80%) percent of the AMI, as determined by HUD with adjustments for family size.

Loan Documents shall mean all of the documents executed by or on behalf of Borrower that govern, secure and/or evidence the City Loan, including without limitation, this Agreement, the Note, the Assignment of Construction Contract, the Assignment of Property Management Agreement, the Assignment of Architect's Contract, Plans and Specifications, the Environmental Indemnity, the Construction Completion Guaranty and the Restrictive Covenants; provided, however, that the Restrictive Covenants shall not be deemed a "Loan Document" for purposes of the Intercreditor Agreement, and further provided that the obligations of the restrictive covenants shall be secured by the Deed of Trust.

Loan Proceeds means amounts disbursed by the City to Borrower pursuant the terms of this Agreement.

Mayor shall mean the Mayor of the City of Houston, or any person that the Mayor may designate to perform the various functions assigned to the Mayor under this Agreement.

Maturity Date the expiration date of the Affordability Period.

Minimum Property Standards shall mean the minimum property standards of the City of Houston as set forth in **APPENDIX 14**, provided, however, that in the event of a conflict between the minimum property standards of the City of Houston and Section 8 Housing Quality Standards for Existing Housing under 24 C.F.R. § 982.401, the more rigorous requirement shall apply as the Minimum Property Standard hereunder.

Note shall mean the note to be executed by Borrower evidencing the Loan, and which shall be substantially in the form attached as an Attachment to this Agreement.

Net Operating Income shall mean the Project's gross operating income less Operating Expenses.

Operating Expenses shall mean all costs and expenses paid or incurred in connection with or relating to the ownership, maintenance or operation of the Project pursuant to the Approved Final Operating Budget and the Approved Final Construction Budget, including any debt service payments related to the Senior Loan and the Subordinate Loan.

Other Financing is defined in Section One, Paragraph M of this Agreement (if applicable).

Operating Agreement shall mean the operating agreement of the Borrower.

Permanent Senior Lender shall mean Capital One, National Association, and its successors and/or assigns, including, without limitation, the Federal Home Loan Mortgage Corporation (Freddie Mac).

Permanent Senior Loan shall mean that certain loan, in the amount not to exceed Six Million Five Hundred Thousand and No/100ths Dollars (\$6,500,000.00), to be made by Permanent Senior Lender on the Conversion Date.

Preliminary Project Budget shall mean the budget for the Project attached as an Exhibit to this Agreement, which has been submitted by Borrower and approved by the Director prior to execution of this Agreement.

Project shall mean the Land described in Section Two, Paragraph 2.1 of this Agreement, together with all buildings and other improvements located or to be located on the Land. Project shall also include all real and personal property interests of Borrower located on, incorporated into, or used in connection with the land and improvements, including without limitation, all leases to Borrower, appliances, air conditioning, heating, ventilation, plumbing and electrical fixtures and equipment.

Project Completion shall mean the date on which all of the following conditions have been satisfied and which:

- (i) fee title to the Land is in Borrower;
- (ii) the Work has been completed to the satisfaction of the Director, and Borrower has delivered to the City an AIA Affidavit of Completion signed by the Borrower, Contractor and Architect for the Project in form and substance acceptable to the Director;
- (iii) The City or the Approved Inspectors have conducted a Uniform Physical Conditions Standards inspection and all deficiencies have been remedied;
- (iv) the Project in the Director's judgment complies with CDBG-DR17 Program Requirements, the requirements of HUD, including but not limited to those set forth in the written "release of funds" authorization from HUD as further described in Section Five, Paragraph 5.4, and the Minimum Property Standards set forth in Section Six, Paragraph 6.10 of this Agreement);
- (v) the final draw request has been made and the draw on the Loan has been disbursed for the Project including retainage;
- (vi) delivery to the City evidence satisfactory to the City, reflecting the full payment of, and executed final, unconditional lien waivers from (or the liens have been bonded around) all contractors, subcontractors and others with respect to the construction of the Project;
- (vii) delivery of Certificates of Occupancy (or their equivalent) issued by all appropriate Governmental Authorities for all portions of the improvements located at the Project;

- (viii) the information necessary for the City to complete the Final Wage Compliance Report has been submitted by Borrower and the City has completed the report and submitted it to GLO; and
- (ix) A letter from the Architect or other qualified professional indicating that the Project is in compliance with all Accessibility Requirements.

Property shall mean all of the property described in the Deed of Trust that is collectively referred to therein as Property.

Property Condition Assessment shall mean a physical inspection of the Project to access any physical deficiencies and defects of the Project and any material deferred maintenance of the Project's systems, components, or equipment as observed during the field observer's walk-through survey.

Property Management Agreement shall mean the agreement between Borrower and the Property Manager, in form acceptable to the Director, outlining the services to be performed by the Property Manager in relation to the Project. The Property Management Agreement shall be collaterally assigned to the City pursuant to the Assignment of Property Management Agreement in form attached hereto as an Attachment or other form approved by the City Attorney.

Property Manager shall mean the person or firm charged with the day to day management of the Project in accordance with the terms of the Property Management Agreement.

Reserve(s) or Replacement Reserve shall mean an escrowed reserve account established for the purpose of funding the replacement of furniture, fixtures and equipment used in connection with the Project and for repair of capitalized improvements, in accordance with Section One, Paragraph 1.O, Section Six, Paragraph 6.24 and the Final Budget.

Restrictive Covenants shall mean the covenants embodied in the Restrictive Covenants to be executed by Borrower, which shall be substantially in the form attached hereto as **ATTACHMENT A** to this Agreement, which covenants require Borrower and its successors and assigns, to comply with certain occupancy and use restrictions for the duration of the Affordability Period, and which shall be superior to any liens evidencing or securing the Senior Loan, the Subordinate Loan, and all other liens and encumbrances in accordance with the Intercreditor Agreement.

Senior Lender shall mean prior to the Conversion Date, the Construction Senior Lender, and from and after the Conversion Date, the Permanent Senior Lender, or other lender approved by the Director.

Senior Loan shall mean, prior to the Conversion Date, the Construction Senior Loan, and from and after the Conversion Date, the Permanent Senior Loan..

Senior Loan Documents shall mean all documents evidencing, securing, or guaranteeing the Senior Loan, including without limitation, the Senior Mortgage.

Senior Mortgage shall mean the lien or liens securing the Senior Loan.

State shall mean the State of Texas.

Subcontractor shall mean any person, firm, or corporation who has a direct contract with the Contractor to perform any portion of the Work at the Project.

Subordinate Lender means Texas Department of Housing and Community Affairs, in its capacity as the lender of the Subordinate Loan, together with its successor and assigns.

Subordinate Loan means a loan made by the Subordinate Lender to Owner in an original principal amount not to exceed Three Million and No/100ths Dollars (\$3,000,000.00).

Subordinate Loan Documents means all documents and instruments that were executed in connection with, and that secure, govern, and/or evidence the Subordinate Loan, as the same may be amended, restated, supplemented or otherwise modified from time to time.

Tax Credit Compliance Period shall mean with respect to any building within the Project, the fifteen-year period beginning with the first taxable year of the Credit Period with respect thereto, as defined in Section 42(i) (1) of the Internal Revenue Code.

Tax Credit Investor shall mean RBC Community Investments, LLC.

Tax Credits means the Low Income Housing Tax Credits issued to Borrower by the Texas Department of Housing and Community Affairs pursuant to Section 42 of the Internal Revenue Code.

TDHCA Restrictive Covenants means that certain Land Use Restriction Agreement, which will impose certain restrictions on the Property executed by Owner and Subordinate Lender, which encumber the Property.

Term has the meaning assigned to it in the Recitals of this Agreement.

UFAS shall mean the Uniform Federal Accessibility Standards as set forth under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 et seq.) and the regulations promulgated in connection therewith.

Work as used in this Agreement shall mean all labor necessary to complete the construction, replacement, repair and any Environmental Mitigation on the Project required by this Agreement, the Construction Contract and HUD, and all the materials and equipment incorporated or to be incorporated into the Project during the course of such construction, replacement and repair work.

APPENDICES TO LOAN AGREEMENT

APPENDIX 1	Applicable Law
APPENDIX 2	Insurance Requirements and Release and Indemnity Provisions for the Approved Construction Contract and the Other Construction and Supply Contracts
APPENDIX 3	Construction Contract Requirements, including bidding procedures if applicable
APPENDIX 4	Survey Requirements
APPENDIX 5	Monitoring Forms including Compliance Forms for Complying with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701u)
APPENDIX 6	Lobbying Certificate (to be delivered on or before the execution of this Agreement)
APPENDIX 7	“Debarment Form”-- Certification regarding Debarment, Suspension, and Other Responsibility Matters (to be delivered on or before the execution of this Agreement)
APPENDIX 8	Reserved
APPENDIX 9	City’s MWSBE, Section 3 and Labor Standards Requirements
APPENDIX 10	Property Condition Assessment requirements (if any)
APPENDIX 11	Multifamily Relocation Requirements, including related forms
APPENDIX 12	Reserved
APPENDIX 13	GLO Lien Waiver Form
APPENDIX 14	Minimum Property Standards
APPENDIX 15	Work Force Protection Measures

EXHIBITS TO LOAN AGREEMENT

EXHIBIT A	Legal Description of the "Land"
EXHIBIT B	Commitments for "Other Financings"
EXHIBIT C	Preliminary Construction Budget
EXHIBIT D	Scope of Work
EXHIBIT E	Construction Schedule.

ATTACHMENTS TO LOAN AGREEMENT

- A. City's Restrictive Covenants
- B. Borrowers' Note
- C. Borrower's Deed of Trust
- D. Financing Statements
- E. Reserved
- F. Reserved
- G. Construction Completion Guaranty
- H. Reserved
- I. Intercreditor Agreement
- J. Reserved
- K. Assignment of Property Management Agreement
- L. Assignment of Architect's Contract, Plans and Specifications, and Consent
- M. Assignment of Construction Contract
- N. Environmental Indemnity Agreement
- O. Form of the Performance Bond, Maintenance Bond, and Payment Bond
- P. Reserved

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Appendix 1
Applicable Law

APPENDIX 1

NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

GENERALLY

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 et seq.);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437(f)(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

GLO Housing Guidelines;

CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 200d et seq.); 24 C.F.R. Part 1, “Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964;”

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e et seq.);

Title VIII of the Civil Rights Act of 1968, “The Fair Housing Act of 1968” (42 U.S.C. 3601 et seq.), as amended, 24 C.F.R. §§ 100.201 and 100.205;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, “Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063.” (The failure or refusal of Grantee to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. § 107.60);

The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794.) and “Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development”, 24 C.F.R. Part 8; and

The Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

LABOR STANDARDS

The Davis-Bacon Act, as amended (40 U.S.C. 276a – 276a-5): 29 C.F.R. Part 5; 24 C.F.R. Part 70; 24 C.F.R. § 570.603;

The Copeland “Anti-Kickback” Act (18 U.S.C. 874): 41 C.F.R. Part 3; 24 C.F.R. Part 135;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-Construction Contracts subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5);

Federal Executive Order 11246, as amended; and

Department of Labor Regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.

EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u): 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

GRANT AND AUDIT STANDARDS

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards issued by Governor’s Office of Budget and Planning; and

Title 1 Texas Administrative Code § 5.167(c).

LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 (b)).

HISTORIC PROPERTIES

The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 Fed. Reg. 8921), 3 C.F.R. 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs;

The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1).

ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 Fed. Reg. 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this Part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 Fed. Reg. 26961), 3 C.F.R., 1977 Comp., p. 171 particularly Sections 2 and 5.

COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(3)(42 U.S.C. 300h-3(e); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. Part 149.).

ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).

WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) as amended, particularly sections 7(b) and (c) (16 U.S.C. §§ 1278(b) and (c)).

AIR QUALITY

The Clean Air Act (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)); and

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202);

Farmland Protection Policy (Department of Agriculture-7 C.F.R. Part 658);

HUD ENVIRONMENTAL STANDARDS

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Parts 50, 51) (other than the runway clear zone and clear zone notification requirement in 24 C.F.R. 51.303(a)(3), as modified by waivers at 83 Fed. Reg. 5844; and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979).

ENVIRONMENTAL JUSTICE

Executive Order 12898 of February 11, 1994 --- Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations, (59 Fed. Reg. 7629), 3 C.F.R., 1994 Comp. p. 859; and

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

SUSPENSION AND DEBARMENT

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5);

Suspension and Debarment (2 C.F.R. Parts 180 and 2424); and

Nonprocurement Suspension and Debarment (2 C.F.R. § 200.213).

ACQUISITION/RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), 24 C.F.R. Part 42; 24 C.F.R. § 570.606; 49 C.F.R. § 24 (URA), as modified by waivers at 83 Fed. Reg. 5844;

Housing and Community Development Act of 1974, as amended by 24 C.F.R. § 42 and as modified by waivers at 83 Fed. Reg. 5844; and

The Protecting Tenants at Foreclosure Act of 2009.

City of Houston Housing and Community Development Department's Residential Anti-Displacement Policy, as the same may be amended (available at <https://recovery.texas.gov/files/housing-guidelines-requirements-reports/residential-anti-displacement-and-relocation-assistance-plan.pdf>)

FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 – Equal Protection of the Laws for Faith-Based and Community Organizations, (67 Fed. Reg. 77141).

CONSTRUCTION AND INSPECTION

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*) and regulations and guidelines promulgated thereunder, including without limitation 24 C.F.R. Part 8;

Fair Housing Act and regulations and guidelines promulgated thereunder, including without limitation 24 C.F.R. Part 100;

24 C.F.R. §§ 982-401 (Section 8 Housing Quality Standards for Existing Housing);

The requirements of 24 C.F.R. § 570.614, which applies the standards of the Architectural Barriers Act (42 U.S.C. §§ 4151-4157) and the Americans with Disabilities Act (42 U.S.C. §§ 155, 201, 218 and 225) to CDBG-funded activities;

Green Building Standards at 83 Fed. Reg. 5844;

Texas Architectural Barriers Act, Article 9102, Tex. Civ. Stat. Ann. (1994) and the regulations and guidelines promulgated thereunder;

Chapter 10, Subsection 60 of the Texas Administrative Code and the regulations and guidelines promulgated thereunder; and

City of Houston's Minimum Property Standards, as amended from time to time.

APPRAISAL

49 C.F.R. § 24.2(a)(3) and 49 C.F.R. § 24.103.

BROADBAND REQUIREMENTS

Any new construction or substantial rehabilitation, as defined by 24 C.F.R. § 5.100, of a building with more than four (4) rental units must include installation of broadband infrastructure. For the purposes of this program, broadband service can either be hardwired or wireless, but it must be provided and 25 Mbps down and 3 Mbps up.

OTHER REQUIREMENTS

Chapter 552, Texas Government Code, the Texas Public Information Act, unless a valid exception exists, and Chapter 2306 of the Texas Government Code.

Appendix 2

Insurance Requirements and Release and Indemnity Provisions for the Approved Construction Contract
and the Other Construction and Supply Contracts

APPENDIX 2

INSURANCE REQUIREMENTS FOR THE APPROVED CONSTRUCTION CONTRACT AND THE OTHER CONSTRUCTION AND SUPPLY CONTRACT

I. GENERAL INSURANCE REQUIREMENTS

A. **COVERAGES.** With no intent to limit Owner's liability under the indemnification provisions set forth above, Owner covenants to provide and maintain (or where applicable, ensure its Contractor provides and maintains) in full force and effect for the periods stated below (or if no period is stated for the longer of any statutory period or the construction phase of this project), at least the following insurance and available limits of liability:

REQUIRED COVERAGES

(Coverage)	(Limit of Liability)
1. Workers' Compensation:* Including All States Insurance, United States Longshoremen and Harbor Workers Compensation Act	Statutory Limits for Workers' Compensation
*See Additional Insurance Requirements Below	
2. Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
3. Commercial General Liability: Including Owner's and Contractor's Protective Liability or Owner's Interest, Broad Form Property Damage, Contractual Liability, Bodily Injury, Personal Injury and Products and Completed Operations (for a period of one-year following completion of the Work under this Agreement)	Combined single limit of \$1,000,000 each occurrence, subject to general aggregate \$2,000,000; Productions and Completed Operations, \$1,000,000 aggregate
4. Owner's and Contractor's Protective Liability <i>or</i> Owner's Interest	100% of Contract Price, including change orders
5. Flood Hazard Insurance **	
**See Additional Insurance Requirements Below	
6. Automobile Liability Insurance	\$1,000,000 combined single limit each occurrence
7. Excess Coverage	\$1,000,000 each occurrence/combined aggregate in excess of the limits specified for Employer's Liability

- | | |
|---|--|
| 8. Property & Casualty Coverage “All Causes of Loss” Builders Risk Form | Commercial General Liability and Automobile Liability
100% of Contract Price, including change orders |
|---|--|

OPTIONAL COVERAGES

- | | |
|---|---|
| 1. Pollution Legal Liability | \$1,000,000 per occurrence/aggregate |
| 2. Coverage for tools, equipment, etc., not included in cost of the Work | Value of items covered |
| 3. Equipment floater policy to cover equipment in transit, at warehouse job site or elsewhere until Work is turned over to the City | Value of Equipment |
| 4. Increased Excess Coverage | In addition to specified coverage, as appropriate for Project |
| 5. Other insurance | As appropriate for Project |

If any of the above insurance is written as “claims made” coverage and the City is required to be carried as an additional insured, then Owner’s insurance shall include a two (2)-year extended discovery period after the last date that Owner provides any Work under this Agreement.

“Aggregate” amounts of coverage, for purposes of this Agreement, are agreed to be the amounts of coverage available during a fixed twelve (12)-month policy period.

B. POLICY REQUIREMENTS

1. **Form of Policies:** The insurance may be in one or more policies of insurance, the form of which is subject to reasonable approval by the Director. It is agreed, however, that nothing the Director does or fails to do with regard to the insurance policies shall relieve Owner from its duties to provide the required coverage hereunder and Director’s actions or inactions will never be construed as waiving City rights hereunder.

2. **Issuers of Policies:** The issuer of any policy must have a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least **B+** and a financial size of **Class VI** or better according to the most current Edition Key Rating Guide, Property Casualty United States. Each issuer must be responsible and reputable and must be subject to approval by the Director in his/her sole discretion as to conformance with these requirements.

3. **Insured Parties:** Each policy, except those for Workers’ Compensation and Professional Liability, must name the City (and its officers, agents and employees) as additional insured parties on the original policy and all renewals or replacements during the term of this Agreement. The City’s status as an additional insured under the Owner’s insurance does not

extend to instances of sole negligence of the City unmixed with any fault of the Owner or general contractor.

4. **Deductibles:** Owner shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents and employees.

5. **Cancellation:** Each policy must expressly state that it may not be cancelled, or materially modified, or non-renewed unless thirty (30) days advance notice of cancellation is given in writing to the City by the insurance company.

6. **Subrogation:** Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees.

7. **Endorsement of Primary Insurance:** Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder.

8. **Liability for Premium:** The Owner shall be solely responsible for payment of all insurance premium requirements hereunder and the City shall not be obligated to pay any premiums.

C. **PROOF OF INSURANCE.** Owner shall provide proof of insurance as indicated below.

1. Prior to commencing any Work under this Agreement, Owner shall furnish the Director with Certificates of Insurance, along with an affidavit from the Owner confirming that the Certificate accurately reflects the insurance coverage that will be available during the term of the Agreement. If requested in writing by the Director, the Owner shall furnish the City with certified copies of Owner's actual insurance policies. Failure of Owner to provide certified copies, as requested, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Agreement.

2. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Owner, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of the Owner to comply with this requirement shall constitute a default of Owner under this Agreement. Owner agrees that the City shall never be argued to have waived or be estopped to assert its rights to terminate this Agreement because of any acts of omissions by the City regarding its review of insurance documents provided by the Owner, its general contractor, or any agents, employees or assigns.

II. ADDITIONAL INSURANCE REQUIREMENTS:

A. **WORKMAN'S COMPENSATION.** Owner agrees to comply with the Worker's Compensation insurance requirements set forth below.

1. **Workers' Compensation Insurance Coverage.** Owner shall, in addition to meeting the obligations set forth in Article I, Required Coverages, maintain throughout the term of the Agreement Workers' Compensation as required by statute and Owner shall specifically comply with all requirements set forth in this Section. The definitions set out below shall apply only for the purposes of this Section:

Definitions:

Certificate of coverage (Certificate): A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission (included in original definition under Rule 110.110 but excluded from this Agreement), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory Workers' Compensation insurance coverage for the Owner's, Subcontractor's, or Supplier's employees providing service on a Project, for the duration of the Project.

Duration of the Project: Includes the time from the beginning of the Work on the Project until the Owner's Work on the Project has been completed and accepted by the City.

Persons providing services on the Project (Subcontractor in Texas Labor Code § 406.096): Includes all persons or entities performing all or part of the services the Owner has undertaken to perform on the Project, regardless of whether that person contracted directly with the Owner and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries and delivery of portable toilets.

2. The Owner shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Owner providing services on the Project, for the duration of the Project.

3. The Owner must provide a certificate of coverage to the City prior to receiving funds under the Agreement.

4. If the coverage period shown on the Owner's current certificate of coverage ends during the duration of the Project, the Owner must file a new certificate of coverage with the City showing that coverage has been extended.

5. The Owner shall obtain from each person providing services on a Project and provide to the City:

- (i) a certificate of coverage, prior to that person beginning Work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- (ii) no later than seven (7) days after receipt by the Owner, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

6. The Owner shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

7. The Owner shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Owner knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

8. The Owner shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

9. The Owner shall contractually require each person with whom it contracts to provide services on a Project to:

- (i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- (ii) provide to the Owner, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- (iii) provide to the Owner, prior to the end of the coverage period, a new certificate of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- (iv) obtain from each other person with whom it contracts and provide to the Owner: (1) a certificate of coverage, prior to the other person beginning Work on the project; and (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (v) retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- (vi) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the Project; and
- (vii) contractually require each person with whom it contracts, to perform as required under this Subparagraph 5.1 A-G, with the certificates of coverage to be provided to the persons for whom they are providing services.

10. By signing this Agreement or providing or causing to be provided a certificate of coverage, the Owner is representing to the City that all employees of the Owner who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Owner shall not be allowed to self-insure Workers' Compensation. Providing false or misleading information may subject the Owner to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11. The Owner's failure to comply with any of these provisions is a breach of contract by the Owner which entitles the City to declare the Agreement void if the Owner does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

B. FLOOD AND HAZARD INSURANCE REQUIREMENTS. Owner must comply with the flood hazard insurance requirements set forth below.

1. Flood hazard insurance is required for projects located in a Special Flood Area (or 100-year floodplain). The Owner shall apply for flood insurance on all insurable structures built under this Agreement, if applicable. A copy of the completed application must be provided to the City before commencing construction on the Project. The Owner shall obtain flood hazard insurance as soon as possible and submit a copy of the policy to the City, if applicable. The Owner also has a statutory responsibility to inform any transferee who receives or purchases the project of any applicable requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap68-subchapIII-sec5154a.pdf>.

APPENDIX 2 cont'd

RELEASE AND INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACT

I. RELEASE

OWNER, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS SECTION AS "OWNER") HEREBY RELEASE, RELINQUISH AND DISCHARGE THE CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS ARTICLE AS "CITY") FROM ANY LIABILITY AS A RESULT OF THE SOLE AND/OR CONCURRENT NEGLIGENCE OF THE CITY FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH THIS AGREEMENT.

II. INDEMNIFICATION

OWNER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH OWNER'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE OWNER IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. ALSO, DURING THE PERFORMANCE OF THE WORK AND UP TO A PERIOD OF FIVE (5) YEARS AFTER THE DATE OF FINAL ACCEPTANCE OF THE WORK, OWNER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND OWNER, WHETHER OWNER IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY THE OWNER TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE OWNER. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE OWNER UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$1,000,000.00 PER OCCURRENCE.

Appendix 3

Construction Contract Requirements, including bidding procedures if applicable

APPENDIX 3

CONSTRUCTION CONTRACT REQUIREMENTS

1. **Davis-Bacon**. Compliance with the federal labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis-Bacon Act shall be verified through on-site inspections by representatives of the City or at the City's option, the Approved Inspectors. Each Construction Contract should include as an attachment HUD 4010 Federal Labor Provisions and HUD Handbook 1344 –Davis Bacon Act. In addition, each Construction Contract must require compliance with CDBG Regulations at 24 C.F.R. 570.603 and Department of Labor regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.
2. **Release and Indemnity Provisions In Contracts**. Inclusion of a release and indemnity in favor of the City in substantially the same text as set forth in these Appendices (when the terms "Owner"/"Agreement" are used below, they encompass the terms "Contractor"/"Contract" and "Subcontractor"/"Subcontract" "Supplier/Supply Contract" where applicable).
3. **Insurance**. Inclusion of the requirement that the contractor, subcontractor, or supplier maintain insurance described in these Appendices (although the Appendices contain these insurance requirements as of the Effective Date of this Agreement, the version of insurance requirements in effect for the City's General Conditions of Construction Contract at the date of Closing of the City's Loan shall supersede the requirements set forth in the Appendices).
4. **MWSBE Requirements**. Owner shall require written contracts and supply agreements with all MWSBE contractors and suppliers and such contracts and supply agreements shall comply with Section One, Paragraph K of this Agreement.
5. **Disputes**. Subject to the requirements of Section 4 above, all disputes concerning the quantity, quality and completion or sufficiency of work performed or materials supplied pursuant to the Approved Construction Contract shall be submitted to the Director for resolution,

and the Director may order the parties to mediation, at his option, to attempt to resolve the dispute in accordance with Section 18, Paragraph 18.18 of this Agreement. The Director may declare a default under the City Loan if any dispute referred to mediation is not resolved within sixty (60) days after submission to non-binding mediation. The Approved Construction Contract and each subcontract will include a requirement that the Director shall have the authority to require any disputes thereunder be submitted to nonbinding mediation, but nothing shall require the City to participate in such mediation. Neither the decision of the Director nor the issuance of a Certificate of Completion shall be construed to release the Borrower, Owner or any surety from liability under any bond, warranty or guaranty to be provided under this Agreement.

6. **Compliance With Minimum Property And Rehabilitation Standards.** The Approved Construction Contract shall provide that the entire Project be constructed or brought up to the standards required by the City's Minimum Property Standards and (b) all applicable local codes, construction standards, ordinances, and zoning ordinances (including without limitation, the City's Building, Housing and Fire Codes). All newly constructed and reconstructed housing units must meet the current requirements of the Model Energy Code (<http://www.energycodes.gov/implement/pdfs/modelcode.pdf>).

7. **Bidding Requirements (if applicable).**

(a) The Contractor shall send an invitation to bid to construction and repair businesses that are listed in the City's Office of Business Opportunity ("OBO"). The Owner also may solicit invitations to bid from other sources.

(b) The Contractor shall solicit at least 3 bids for all Work.

(c) The Contractor shall provide a bid package to all prospective bidders. The Contractor may charge bidders the cost of copying the bid package. The bid package shall contain

the Approved Final Plans, Specifications, and Drawings and shall contain the Construction Contract Requirements set forth as an exhibit to this Agreement.

(d) The Contractor shall select the lowest responsible bidder for award of the contract.

(e) The Contractor shall give the selected bidder written notice of the award. The notice shall state that the award is conditioned upon the bidder's compliance with this Agreement, including, without limitation, compliance with the MWSBE provisions.

8. **Audit Rights.** Each Construction Contract and subcontract shall contain provisions granting GLO and the City the right to review, audit and monitor any construction contracts and subcontracts.

9. **Reserved.**

10. **Penalties.** Each Construction Contract and subcontract shall include a clause that failure to adequately perform under the contract may result in penalties including the possibility of debarment from future GLO or City work.

Appendix 4

Survey Requirements

APPENDIX 4

SURVEY REQUIREMENTS

- (1) Prepared by a licensed Texas surveyor;
- (2) in form and content satisfactory to the Director;
- (3) in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors, or the Texas Surveyors' Association;
- (4) in form necessary for the title company issuing title insurance to amend the survey exception to read "shortages in area";
- (5) containing a certificate which includes a statement as to whether any portion of the Land is located within a flood plain, flood hazard or flood prone area;
- (6) certified to the title company and the City and their respective successors and assigns;
- (7) containing the same legal description contained in the Senior Loan Documents;
- (8) including, a metes and bounds description of the real property comprising the Land,
- (9) with the surveyor's seal affixed; and
- (10) with a certification for the Survey in the form set forth below or such other form acceptable to the Director:

The undersigned hereby certifies to the City of Houston, _____ (Owner), and _____ (Title Company) that this survey: (i) was made on the ground as per the field notes shown thereon and correctly shows the boundary lines and dimensions and the area of the land indicated thereon and each individual parcel thereof indicated thereon; (ii) correctly shows the location of all buildings, structures, and other improvements and visible items on the subject property; (iii) correctly shows the location and dimension of all alleys, streets, roads, rights-of-way, easements, and other matters of record of which the undersigned has been advised by the title commitment issued by Title Company, Commitment No. _____ affecting the subject property according to the legal description in such recorded easements and other recorded matters; (iv) correctly shows the location of all streets and roads providing access to the subject property, and that such streets and roads that provide such access have been dedicated for public use in Book _____, Page _____, Plat Records of _____ County, _____, and are built and are being maintained by _____; there are no encroachments or overhangs on adjoining premises, streets, or alleys by any of said buildings, structures, or other improvements, rights of way, party walls, or boundary conflicts and there are no

visible encroachments or overhangs on the subject property by buildings, structures, or other improvements situated on adjoining premises; the distance to the nearest intersecting street or road is as shown hereon; there is physical ingress and egress to the subject property by paved, dedicated public streets maintained by the city or county in which the subject property is located; and there is no visible use of ingress-egress across the subject tract by an adjoining property; and (v) was performed in accordance with the standards of a Category 1A survey under the Manual of Practice for Land Surveying in Texas.

SURVEYED BY: _____

SEAL

Date of Survey
Reg. Professional Land Surveyor No. _____

Note: This copy of this plat is not valid unless an original signature through an original seal appears on its face.

FLOOD PLAIN NOTE: This tract is not within an identified (shaded) special flood hazard area (including the 100-year flood), but is within zone X, areas determined to be outside 500 year flood-plain, as identified by the Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map for _____ County, _____, and incorporated Areas Map No. _____ dated _____.

The above statement is for information only and this surveyor assumes no liability for the correctness of the cited map(s). In addition, the above statement does not represent this surveyor's opinion of the probability of flooding.

Appendix 5

Monitoring Forms including Compliance Forms for Complying with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec 1701u)

COMPLIANCE FORMS

WWW.HOUSTONTX.GOV/HOUSING

BUILDING A BETTER HOUSTON

2100 Travis Street | 9th floor
Houston, TX 77002 | 832.394.6160

www.houstontx.gov/housing



@HoustonHCDD

CITY OF HOUSTON
HOUSING AND
COMMUNITY
DEVELOPMENT

CONTACT INFORMATION

City of Houston - HCDD 2100 Travis Street, 9th Floor Houston, TX 77002		
CONTRACT COMPLIANCE SECTION MWSBE/Section 3/Community Involvement		
Division Manager	Chrystal Boyce	(832) 394-6130 Chrystal.Boyce@houstontx.gov
Administrative Coordinator	Lakesha Tates	(832) 394-6345 Lakesha.Tates@houstontx.gov
MWSBE Coordinator	Taylisha Clark	(834) 394-6326 Taylisha.Clark@houstontx.gov
MWSBE Contract Administrator	Eva Alcalá	(832) 394-6118 Eva.Alcala@houstontx.gov
MWSBE Contract Administrator	Aldwin Foster-Rettig	(832) 394-6202 Aldwin.Foster-Rettig@houstontx.gov
Section 3 Lead Contract Administrator	Tiffany Wyatt	(832) 394-6379 Tiffany.Wyatt@houstontx.gov
Section 3 Contract Administrator	Desmond Calloway	(832) 393-9110 Desmond.Calloway@houstontx.gov
Section 3 Coordinator	Patricia Holcombe	(832) 394-6321 Patricia.Holcombe@houstontx.gov
Community Involvement Coordinator	Karen Franklin	(832) 394-6160 Karen.Franklin@houstontx.gov

COMPLIANCE FORMS

Instructions: All compliance forms must be completed and/or signed by a duly authorized member of the firm. The Prime Contractor, Subcontractor, and Suppliers must upload the following forms in **LCPTracker** by the deadlines provided below. Read each form to verify if it's applicable to your firm and follow the instructions written on each form.

The following form(s) are to be submitted <i>before construction</i> commences.		
Compliance Section(s): MWSBE/Section 3	Form/Documents	Due
All sections	Executed contract agreement, purchase order, and/or invoice	Within 5 business days of executed contract agreement
All sections	Compliance Cover Sheet	Within 5 business days of executed contract agreement
All sections	Request for Contractor/Subcontractor Clearance Form/SAM Verification	Before execution of contract agreement
All sections	Start of Work Notice	Upon commencement of work
All sections	Termination of Work Notice	Upon completion of work
MWSBE/ Section 3	Section 3/MWSBE Utilization Plan	Within 5 business days of executed contract agreement, monthly, and/or when changes occur
Section 3	Contractor's Section 3 Compliance Certification	Within 5 business days of executed contract agreement
Section 3	First Source Hiring Agreement	Within 5 business days of executed contract agreement
Section 3	Permanent Employee List	Within 5 business days of executed contract agreement
Section 3	Workforce Analysis Form	Within 5 business days of executed contract agreement
Section 3	Internal Capacity Affidavit	Within 5 business days of executed contract agreement or when internal capacity is reached
Section 3	Monthly Verification of Internal Capacity Status	Between 1 st and 5 th day of the month capturing previous month activity
Section 3	Section 3 Monthly Activity Report	Between 1 st and 5 th day of the month capturing previous month activity
Section 3	Section 3 New Hire Form	Between 1 st and 5 th day of the month capturing previous month activity
Section 3	Confirmation of Subcontractor Amount	Within 5 business days of executed contract agreement
Section 3	E-BID Announcement	Submit at least 14 business days from need to contract
Section 3	Employment Opportunity Announcement (EOA)	Submit at least 14 business days prior need to hire
Section 3	Bid Tabulation	Submit no later than 5 business days after final selection is made
Section 3	Template - Section 3 Signage (GC)	Signage must be posted on site prior to start of work

Compliance Cover Sheet



Return with Compliance Documents **(Complete all fields)**

Project Name:		
Name of Prime Contractor/Sub/Supplier:		I/We have a written contract or purchase order with:
Services to be provided:		NAICS code [Hint: To look up a code, please visit http://www.census.gov/eos/www/naics/]
Company Address:		Pre-existing LCP Tracker User ID:
EIN or SS Number:	DUNS Number: (N/A if not applicable)	Contract Amount: \$
Compliance Contact Person/Title:		Email:
Phone Number:		Fax Number:
*Owner's Ethnicity/Racial Background:		Gender:
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> SBE
		Section 3

Instructions:

This form must be completed by all Prime contractors, Subcontractors, and Suppliers upon execution of a contract agreement, purchase order and/or invoice.

**For contracts applicable to Section 3, Suppliers that do not perform labor should NOT complete this form.*

The Prime Contractor is responsible for collecting this form from Subcontractors and Suppliers to complete setup and access to LCP Tracker.

**HUD's ethnicity categories are: White American, Black American, Native American, Hispanic American, Asian/Pacific American and Hasidic Jewish.*

***REQUIRED BY ALL SECTIONS**

Request for Prime Contractor/Subcontractor Clearance

No contract can be executed with a Prime Contractor, Subcontractor or Supplier until their eligibility has been verified by HCDD.

Date	
Project Name	
Project Address	
Prime Contractor/Sub/Supplier	
EIN or SS Number	
Address/Zip Code	
Phone Number	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other
Check the applicable entity	

List Principal(s) below:

Instructions:

To ensure eligibility, a search must be conducted of the (1) Company Name, (2) Principal Owner(s) and (3) the Employer Identification Number (EIN) through www.sam.gov/SAM.

The Prime Contractor verifies the eligibility of all Subcontractors and Suppliers. Search results and the Request for Clearance form MUST be uploaded in LCP Tracker for each Subcontractor and Supplier.

***REQUIRED BY ALL SECTIONS**



Prime Contractor Information

Project Name	
Project Address	
Prime Contractor/Sub Name	
Prime Contractor/Sub Address	
Start of Work Date	

Prime Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

This form must be completed by the Prime Contractor/Subcontractor and serves as notice of commencement of work to HCDD.

REQUIRED BY ALL SECTIONS

Termination of Work Notice

Prime Contractor Information

Project Name	
Project Address	
Prime Contractor/Sub Name	
Prime Contractor/Sub Address	
Termination of Work Date	

Prime Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

This form must be completed by the Prime Contractor/Subcontractor and serves as notice to HCDD that work has been completed.

***REQUIRED BY ALL SECTIONS**



Section 3 Utilization Plan

A Prime Contractor must submit an initial Utilization Plan when selected and then **once every month and/or when there are changes to utilization and/or contract amounts**. All Subcontractors, and Owner/Developer are also required to submit a Utilization Plan **once every month and/or when there are changes to utilization and/or contract amounts**. Section 3 requires an Owner/Developer(s), Prime Contractor & Subcontractor to award 10% of the construction budget to Section 3 Business Concerns when "NEW" contracting opportunities arise. This requirement by Section 3 **excludes** Suppliers. The 10% hard cost goal is calculated based on the total contract amount financed with HUD funds for construction related activities. The 3% soft cost goal is applicable when "New" opportunities arise for non-construction related activities. The 3% is calculated based on the soft cost budget, not the total contract amount. This form **MUST** be completed by **ALL** Subcontractors working on projects at all tier levels.

Reminder: THIS FORM MUST BE DATED BETWEEN THE 1ST AND 5TH OF EACH MONTH.

IA. DDMMYYYY	IB. Project Name:	IC. Contract Number:	ID. Contractor Amount:	IE. Contact Person:	IF. Prime Subcontractor Name:	IG. Compliance Contact Name:	II. Compliance Contact Telephone Number:			
2A. Required 10% Hard Cost Goal	2B. Achieved 10% Hard Cost Goal	2C. 10% Hard Cost Met	2D. Soft Cost Budget (N/A if not applicable)	2E. Required 3% Soft Cost Goal	2F. Achieved 3% Soft Cost Goal	2G. 3% Soft Cost Met				
NAICS Code (6digits)	Subcontractor	Section 3 Certified (Select drop down Yes or No)	Gender (Select drop down Male or Female)	Ethnicity (Enter options below)	Description of Service	EIN or ISS	Contract Amount	% of Contract	Hard Cost, Soft Cost or Supplier (select the correct choice)	Address & Phone Number
		No	Female	White American						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						

*HUD's ethnicity categories are: White American, Black American, Native American, Hispanic American, Asian/Pacific American and Hasidic Jewish



MWSBE Utilization Plan

A Prime Contractor must submit an initial Utilization Plan when selected and then once every month and/or when there are changes to utilization and/or contract amounts. All Subcontractors, Suppliers and Owner/Developers are also required to submit a Utilization Plan once every month and/or when there are changes to utilization and/or contract amounts. This form MUST be completed by ALL Subcontractors and Suppliers working on MWSBE projects at all tier levels.

Reminder: THIS FORM MUST BE DATED BETWEEN THE 1ST AND 5TH OF EACH MONTH.

1A. DDMMYYYY:		1B. Project Name		1C. Contract Number		1D. Contractor Amount:		1E. Prime Sub Contractor Name:		1F. Compliance Contact Name:			1G. Compliance Contact Telephone Number:	
NAMES Code (required)	Subcontractor/Supplier	MWSBE (select only Asian/Hispanic/No)	Section 3 Certified (select correct choice)	Ethnicity (select options (select correct choice))	Description of Service	EIN or SSN	Contract Amount	% of Contract	Hard Cost, Soft Cost or Supplier (select the correct choice)	Address & Phone Number & Email				
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
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		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										
		No	No	Hasidic Jewish										

***HUD's ethnicity categories are: White American, Black American, Hispanic American, Native American, Asian/Pacific American and Hasidic Jewish.*

****Note: Actual dollar amounts are assumed if the date is in the past, otherwise numbers reflect projected dollar amounts****

Contractor's Section 3 Compliance Certification

The undersigned makes this affidavit with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury I hereby state:

1. I am the _____ of _____.
(owner, partner, officer, representative, agent) (Company Name)
2. My company adheres to Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u which requires, to the greatest extent feasible, that a "good faith effort" given to identifying small businesses located within the boundaries of the Section 3 service area, making them aware of contracting opportunities, encouraging their participation and actually awarding contracts to Section 3 business concerns through the assistance of the City of Houston and their referral system.
3. An attempt will be made to undertake outreach activities intended to encourage participation by Section 3 residents in training and employment opportunities, to include but not be limited to utilizing the referral established by the City of Houston, the Texas Employment Commission, and Houston Works.
4. My company also acknowledges and affirms the required steps stipulated in the Code of Federal regulations 24 CFR Part §135.38 for any "New" services, i.e. employment/labor, services/materials, or subcontracting. Any violation of this requirement will present a negative impact on the performance rating of the recipient, developer, and contractor/subcontractor.

§ 135.38 Section 3 clause

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and new applicants can see. The notice shall describe the section 3 preference, set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the required qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the

subcontractor has been found in violation of the regulations in 24 CFR part 135.

- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Affiant's Signature: _____ Address: _____

Affiant's Title: _____ Telephone: _____

Affiant's Company Name: _____

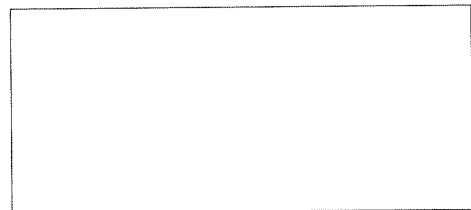
_____ Subscribed and

sworn to under oath before me this _____ day of _____, 20____

Notary Public Signature

My Commission Expires: _____

Notary Stamp



First Source Hiring Agreement

This agreement is entered this _____ day of _____, 20__ by and between the City of Houston and, hereinafter referred to as the "City", and hereinafter referred to as the "Contractor", in connection with work to be performed in relation to the City's HUD-assisted project entitled, hereinafter referred to as the "project".

Whereas, HUD has promulgated certain regulations to implement Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 U.S.C. 1701u) (Section 3), which regulations were published in the Federal Register June 30, 1994 at page 33865, hereinafter referred to as the "Section 3 regulations"; and

Whereas, the purpose of Section 3 regulations is to ensure that employment and other economic opportunities generated by Section 3 covered assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, and to business concerns, which provide economic opportunities to such persons.

Whereas, HUD has set forth numerical employment, and contracting goals to be achieved by all Community Development recipients of Section 3 covered assistance and by other recipients of such assistance in which HUD's share exceeds \$200,000 per project and by those Contractors whose share of such projects exceeds \$100,000; and

Whereas, the numerical goal so established by HUD applicable to the Project is set forth below; and

Whereas, recipients of Section 3-covered assistance and their contractors can demonstrate compliance with the Section 3 regulations by committing to employ Section 3 eligible persons as the applicable percentage of the aggregate number of new hires during the time period involved in the Section 3-covered project; and

Whereas, the City and the Contractor are desirous of being in compliance with the Section 3 regulations as they relate to the Project;

Now Therefore, the City and the Contractor agree as follows:

1. The Contractor and any of its subcontractors shall supply the City with a list of all full-time employees currently employed, indicating which, if any, of said employees were hired within the past three years and were also low or very low-income persons when so hired;
2. The Contractor and any of its subcontractors shall provide a listing of any and all positions for which new hires are expected to be required as a result of the Project;
3. The Contractor and any of its contractors will, to the greatest extent feasible, endeavor to hire 30% percent of the new hires generated by the Project from the following list of Section 3-eligible groups, in the order of priority listed:
 - a. Section 3 residents of service area or neighborhood;
 - b. Youth build participants;
 - c. Homeless projects; Homeless persons; and
 - d. Other Section 3 residents.
4. The Contractor and any of its subcontractors will be encouraged to make new hires from the list of Section 3-eligible groups in Paragraph 3 above for any and all other projects assisted with Federal funding, whether or not such project is subject to the Section 3 regulations;

5. The Contractor and any of its subcontractors shall accept referrals of Section 3-eligible persons from the City.

Provided, however, that nothing in this agreement is to be construed requiring any party hereto, or its subcontractors, to hire any person or persons who are unqualified to or incapable of carrying out the work required of any such new hires.

Witness our hands and seals on the date first written above:

The City of Houston
Department of Housing & Community Development

by _____
Section 3 Coordinator

Contractors Name:

by _____
its Owner/President/Vice President

***SECTION 3 ONLY**

Permanent Employee List

Project Name: _____ Total Amount of Contract: _____

Name of Contractor: _____ Address: _____

Name of Contact Person: _____ Date: _____

Employee Names	Job Title	Certified Section 3 Resident		Monthly Salary or Hourly Rate
		Yes	No	

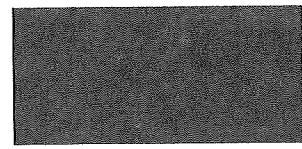
I certify the above-named individuals are permanent employees of this firm. I understand that falsifying information is perjury and subject to legal ramifications.

Print Name / Title

Signature

Date

SECTION 3 ONLY



Section 3 Prime Contractor/Subcontractor Workforce Analysis Form

ESTIMATED PROJECT WORK FORCE BREAKDOWN

	Job Category	Estimated Number of Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled w/ Section B Residents
Non-Construction	Officer/Supervisor				
	Professionals				
	Technical				
	Office/Clerical				
	Service Workers				
	Other:				
Construction	Journeyman:				
	Apprentices:				
	Laborers				
	Trainees				
	Other:				

EMPLOYMENT CERTIFICATION (make additional copies of this form if necessary)

The Company hereby certifies that the above table represents the appropriate number of employee's positions required in the execution of project and represents the number of Section 3 service area residents that the company proposes to employ. The Company certifies that it will make a good faith effort to employ the number of lower income employees stated utilizing such community-based organizations and service agencies as the Texas Employment Commission and Houston Works.

Company: _____

Title: _____

By: _____

Date: _____

Affidavit:

The undersigned makes this affidavit with full knowledge of the content described in the Section 3 Program regulations at 24 CFR Part 135. Each recipient of Section 3 covered financial assistance, and its contractors or subcontractors are required to comply with the requirements of Section 3 for new employment, training, or contracting opportunities that are created during the expenditure of covered funding. This requirement applies to matters which include:

1. All construction projects for which the amount of City (HUD-sourced) assistance to the project or program exceeds \$200,000.
2. All Contractor-Subcontractor situations where the individual contract or subcontract exceeds \$100,000 from the City with HUD-sourced funds.

This affidavit is to document the contractor has sufficient internal capacity to execute the entire scope of work awarded without the need to subcontract and to acknowledge by the undersigned if subcontracts are required, they may be subject to additional requirements under the Section 3 program.

Under penalty of perjury I hereby state:

I, _____ am the _____ of _____,
(Print Name) (Owner, partner, officer, representative, agent) (Company Name)

which has executed a contract with _____ to perform _____
(Other Contract Party) (Description of Work)

_____ on the project known as _____
(Description of Work - Continued) (Name of Project)

and represent that the contract covered by this affidavit has met the conditions, including those described above and hereby authorize and request any person, firm or corporation to furnish any information requested by the Housing and Community Development Department in verification of the recitals comprising this _____ day of _____, 20____.

_____	_____	_____
Company Name	Representative Signature	Title

STATE OF TEXAS §
 §
COUNTY OF _____§

_____ being duly sworn, deposes and says that he/she is the
_____ (Print Name)
(Owner, partner, officer, representative, agent)

of _____ and that the answers to the foregoing questions and all statements therein contained are true
(Company Name)
and correct.

Subscribed and sworn to before me this _____ day of _____, 20____.

_____ My Commission Expires: _____
Notary Public Signature

Notary Stamp

Only submit form if Prime/Subcontractor does not have a need for lower-tier subs or new hires for the duration of the project.



This Form is to be completed and submitted by the 5th of each month by every Subcontractor claiming Internal Capacity, for the duration of their contract. Always report for the previous month; (E.g., Form due on July 5th, will be reporting activity of June).

Reporting Month:	Project Name
Subcontractor	Contracted With

By signing below, I hereby verify that my company has remained in the qualifying Internal Capacity parameters stated below:

- No Lower-Tier Subcontracts have been awarded, and/or
- No New Hires (employees placed on payroll) have been hired to work specifically on the project stated above.

By signing below, I also verify that I understand that in the event my company has the need for lower-tier subcontracts and/or new hires, I will immediately alert the General Contractor and will follow the below Section 3 Procurement Processes. I also understand that my company can no longer claim Internal Capacity and will be required to comply with all Section 3 requirements that are now applicable.

Section B Procurement Process for Lower-Tier Subcontractors

1. Subcontractor will submit **Ebid Announcement** that lists scope of work, contact information and a bid due date (minimum is two weeks). Subcontractors should submit Ebid directly to General Contractor.
 - a. Ebid will be forwarded to HCDD and will then be sent to all Section 3 Businesses.
2. Subcontractor will review all bids received and will award contract based on the Section 3 procurement guidelines, depending if bids are construction or non-construction:
 - a. 10% of construction contract must be awarded to Section 3 Business.
 - b. 3% of soft cost (non-construction) budget must be awarded to Section 3 Business.
3. Subcontractor will submit a **Bid Tabulation** after all bids have been received. The bid tabulation should indicate which awarded contracts were to a Section 3 Business.
4. Subcontractor will submit a **Utilization Plan** that lists all Lower-Tier Subcontractors, Professional Services and Suppliers being utilized. The template is provided on page 46 of the Section 3 Contractor Orientation Guide.

Section B Procurement Process for New Hires

1. Subcontractor will submit an Employment Opportunity Announcement (EOA) that lists position details, applicant qualifications, contact information and application deadline. EOA will be submitted directly to the General Contractor.
 - a. EOA will be forwarded to HCDD and will then be sent to all certified Section 3 Residents.
2. Subcontractor will hold interviews and determine how the 30% New Hire Goal will be met.
 - a. For example, if 10 new hires are needed, at least 3 must be either:
 - i. Currently certified as a Section 3 Resident
 - ii. Qualifies as a Section 3 Resident (required to complete Section 3 Resident Application)
3. Subcontractor will notify the General Contractor of hiring results and will submit the following:
 - a. Statement indicating how the 30% New Hire Goal was met, list of new hire names and Section 3 Resident status.
 - b. Section 3 Resident Applications for new hires that must be certified in order to meet the 30% New Hire Goal.
4. Subcontractor will start submitting monthly reporting and any other additional documents needed for the duration of their contract.

Print Name

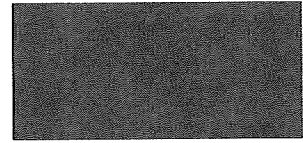
Title Company

Signature

Date

SECTION 3 ONLY

Section 3 Monthly Activity Report (PART I)



Contractor Name	Project Name
Contractor Address	Contract Amount
Contact Person	Reporting Month
Phone Number / Email	Date of Submission

Employment and Training

A Job Category	B				C		D			
	New Hires		No New Hires		Employees		Trainees		No Trainees	
	Section 3 New Hires*		Non-Section 3 New Hires		Section 3 Employees*	Non-Section 3 Employees	Section 3 Trainees* Previously Reported That Worked This Month		New Section 3 Trainees* Reporting for the First Time	
	# of New Hires	Hours Worked	# of New Hires	Hours Worked	Hours Worked	Hours Worked	# of Trainees	Hours Worked	# of Trainees	Hours Worked
Professional										
Technician										
Office/Clerical										
Trade:										
Trade:										
Trade:										
Trade:										
Other:										
Other:										
TOTAL										

- NOTES:**
1. This form **MUST** be submitted by **ALL** contractors (with a contract in excess of \$100,000) no later than the **5th** of each month.
 2. Reporting **MUST** always reflect previous months activity.
 3. New Hires are reported under Column "B" for the first month following their date of hire. Thereafter, New Hires are reported under Column "C".
 4. All New Hires **MUST** be listed on the Section 3 and Non-Section 3 New Hire Form.
 5. This Form is **NOT** required by Prime and Subcontractors claiming "Internal Capacity".



Section 3 and Non-Section 3 New Hire Form (PART II)

Form Instructions

Contractor Name:		Reporting Month/Year:									
A. First Name	B. Last Name	C. Racial/Ethnic Code	D. Hire Date	E. Hourly Rate	F. Section 3 Status	G. Trade Work	H. Hours Worked	I. Hours Trained	J. Payroll Classification		

- A. First name of Section 3 Resident
- B. Last name of Section 3 Resident
- C. Racial/ethnic code: 1 – White American, 2 – Black American, 3 – Native American, 4 – Hispanic American, 5 – Asian Pacific American, 6 – Hasidic Jew
- D. Hire date of Section 3 Resident
- E. Hourly rate of Section 3 Resident
- F. Indicate Section 3 status by entering either: New Hire, Employee or Trainee
- G. Trade work performed by Section Resident
- H. Hours worked during reporting month by Section 3 New Hire or Section 3 Employee
- I. Hours trained during reporting month by Section 3 Trainee
- J. Indicate payroll classification: Full Time, Part Time, FT – Temporary, PT – Temporary, PT-Seasonal, FT-Seasonal, Internship



Project Name: _____

Subcontractor Name: _____

Executed Contract With: _____

Original Contract Amount: _____

Start of Work Date: _____
Contract Amount at Start of Work: _____

Please complete one (1) of the following that applies:

A.

Contract Amount Has Remained Less Than \$100,000

If the contract amount is below \$100,000 prior to the start of work date, the Subcontractor is not required to comply with Section 3 due established minimum threshold. Sign below and submit form.

I, hereby, confirm that the above Subcontractor's contract amount has stayed below the \$100,000 threshold by the start of work date stated above.

_____	_____	_____	_____
Print Name	Title/Company	Signature	Date

B.

Contract Amount Has Increased to Equal to or Greater Than \$100,000

If the contract amount is now in excess of \$100,000, the Subcontractor is required to comply with the Section 3 federal regulations and the HCDD's Section 3 policy and procedures set forth in the Section 3 Contractor Orientation Guide.

I, hereby, acknowledge that the above Subcontractor's met the minimum threshold and I understand that the Subcontractor is now required to comply with the Section 3 requirements set forth in the Section 3 Contractor Orientation Guide.

_____	_____	_____	_____
Print Name	Title/Company	Signature	Date

Section 3 EBID Announcement



Date: _____ **BID DUE BY:** _____

To: Section 3 Contractors, Labor Force, and Materials Vendors

Project Name: _____
Address, City, State, Zip: _____
From: _____

Summary of Work: _____

This project is (name of project) _____, As a General Contractor/Subcontractor, we are hiring Section 3 companies/residents that can perform the following scope of work:

(description and minimum qualification) _____

If interested, please contact me as soon as possible to schedule an appointment to look at the scope of services. This project is funded through a federal grant; therefore, we encourage all qualified Section 3 Business Concerns/Residents to respond to this E-Bid for employment and Contracting Opportunities.

Contact Information:

Please email this form to _____, Should you have any questions contact: (Name and Phone Number) _____

Bidder Information: _____

- Yes, I will be bidding on the project No, I will not be bidding on this project

Contract Name: _____

Company: _____

Phone number: _____

Address: _____

Email: _____

Trade/Specialty: _____

HCDD contractors are committed to "ensure employment and economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, state and local laws and regulations, be directed to low and very low-income persons." If your company is interested in certifying as a Section 3 Business Concern complete the application process here: <https://hcddsection3.gob2g.com/>

This form must be completed and submitted to HCDD Section 3 and MWSBE Compliance Coordinators for all contracting opportunities.



Section 3 Employment Opportunity Announcement (EOA) for procuring Labor for Section 3 Residents

DATE: _____ **APPLICATION DEADLINE:** _____

TO : _____ *Section 3 Residents*

PROJECT: _____

FROM: _____

POSITION NEEDED/DESCRIPTION: _____

CONTACT INFORMATION: _____

Section 3 Residents: Include this cover sheet with your application

Yes, I am interested in this position No, I am not interested in this position

Contact Name: _____

Address: _____

Phone: _____ Email: _____

Job: _____

Job Skills: _____

Federal Labor Standard Provisions including the Davis Bacon and Related Act may be applicable to the construction of this project.

If you know someone interested to become a certified Section 3 Resident the guidelines and Application are available here: <https://www.houstontx.gov/housing/compliance.html#sec3>

The Housing and Community Development Department (HCDD) Section 3 Program is committed to ensure that employment and economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, state and local laws and regulations, be directed to low- and very low-income persons.

Sample Bid Tabulation

Date:

**COST
CODE:**

**Projected
Budget**

COST BREAKDOWN

SUBCONTRACTORS **BID
AMOUNT**

per unit
per square foot
per unit
per square foot
per unit
per square foot
per unit
per square foot

Labor \$
 -
Material \$
 -
TOTAL: \$
 -

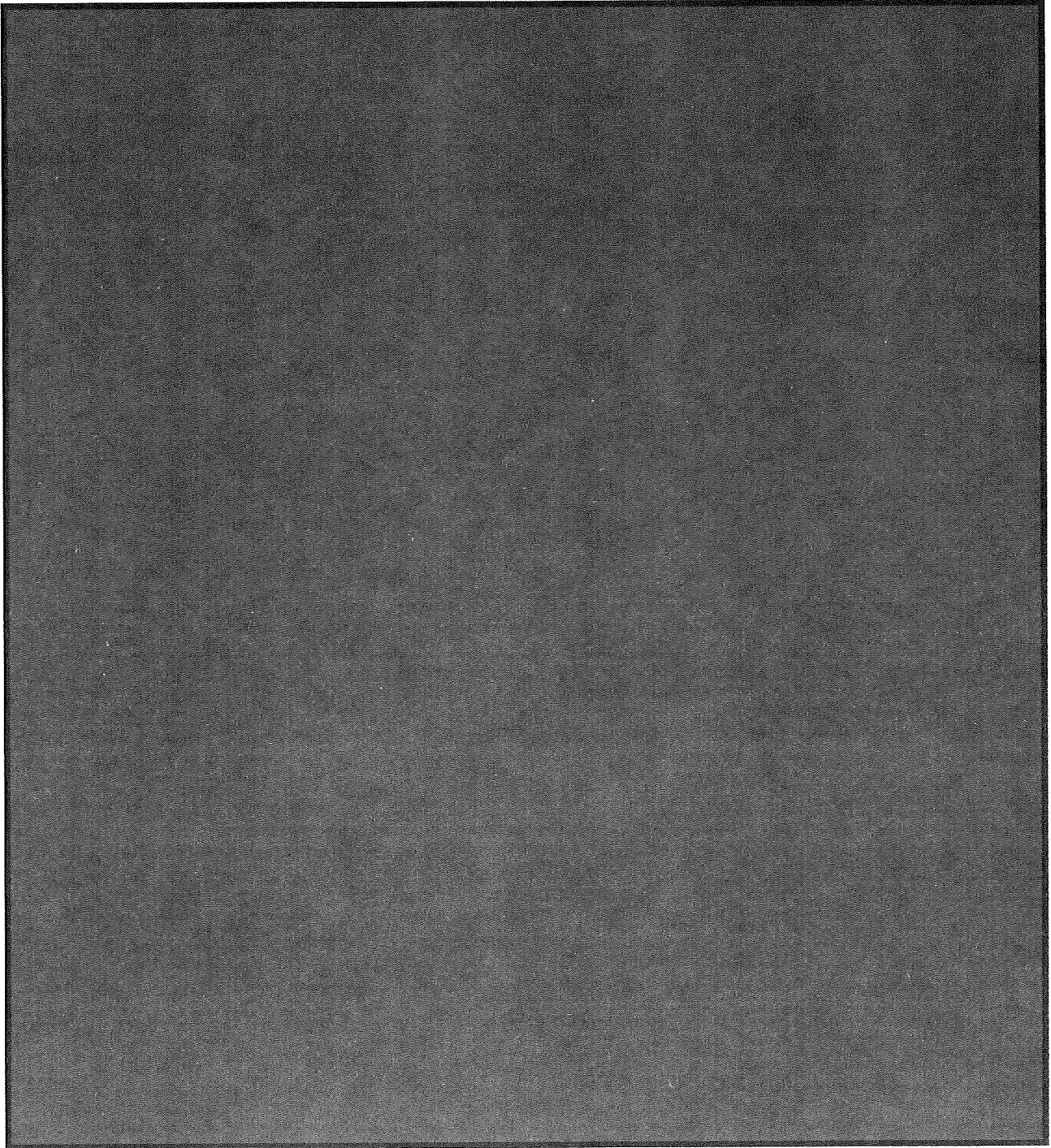
PM:

SPM:

VP:

CONTRACT:
P.O.:

Signage Template



SUPPLEMENTAL COMPLIANCE FORMS, TEMPLATES AND REFERENCE MATERIAL

In addition to the forms listed on the previous pages, Prime Contractor, Subcontractor and Suppliers are **required** where applicable, to submit supplemental compliance forms during and upon completion of the construction. The supplemental forms, templates and reference material are available for download in LCP Tracker. For your convenience, a **sample** of available forms and documents in LCP Tracker are attached:

Compliance Section: MWSBE/ Section 3	Form	Deadline
All sections	Work on Hold Notice	Refer to instructions
All sections	System for Award Management Instructions	N/A
All sections	Statement of Information for SAM Results	N/A
MWSBE	MWBE Utilization Schedule	Submitted with "Initial" Utilization Plan, and/or when Prime fails to meet MWBE participation goals.
MWSBE	Mediation Arbitration Language	Included in certified firms executed contract agreement and or purchase order(s)

Appendix 6

Lobbying Certificate

APPENDIX 6

CERTIFICATION REGARDING LOBBYING

The undersigned, as Manager of DMA Ella Grand, LLC, a Texas limited liability company, Managing Member of HOUSTON DMA HOUSING II, LLC, a Texas limited liability company, certifies, to the best of his or her knowledge and belief, that:

(1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobby", in accordance with its instructions.

(3) This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

BORROWER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

Date

Appendix 7

Debarment Form

APPENDIX 7

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The undersigned, as Manager of DMA Ella Grand, LLC, a Texas limited liability company, Managing Member of HOUSTON DMA HOUSING II, LLC, a Texas limited liability company, certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract or agreement under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

If the undersigned is unable to certify to the above statements, its explanation is attached – N/A.

BORROWER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____

Name: Diana McIver

Title: Manager

Date

Appendix 8

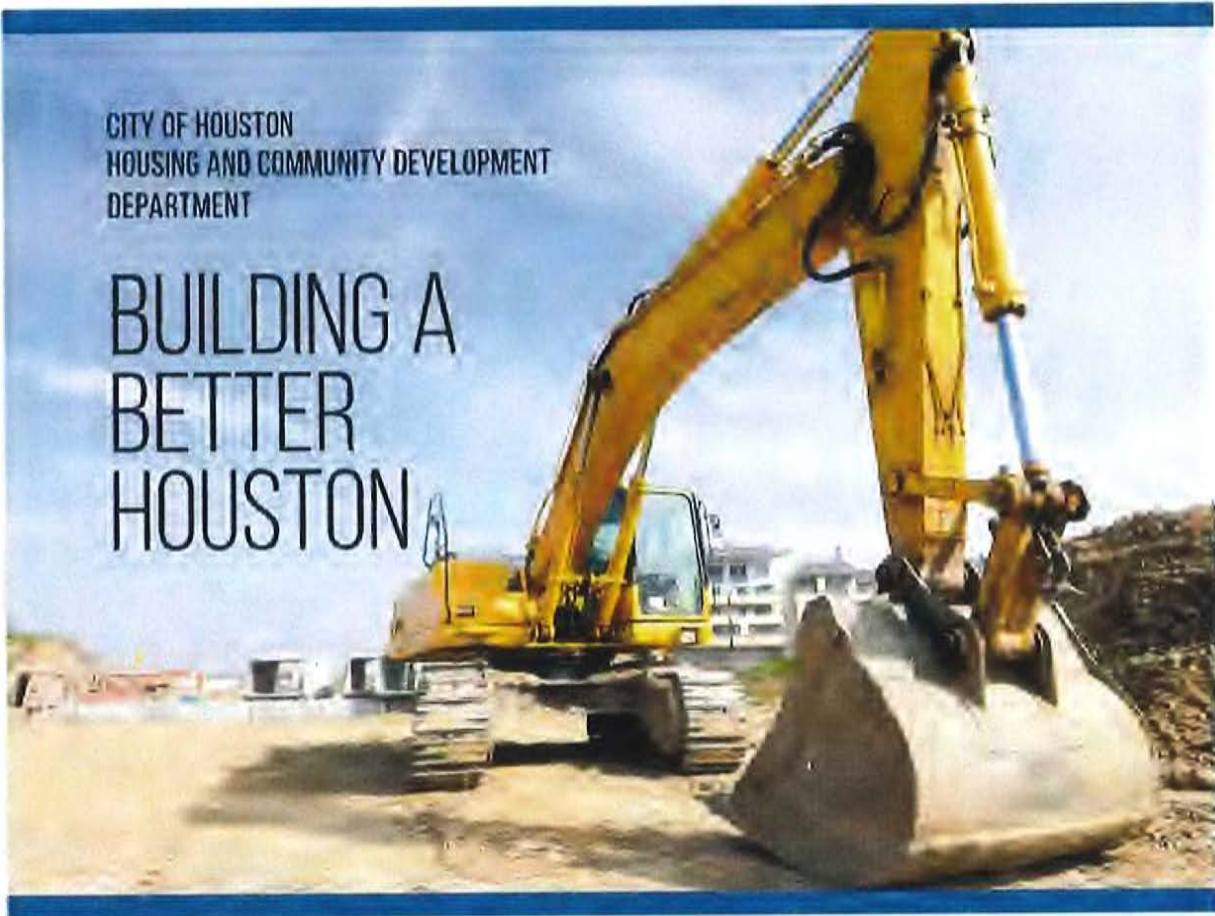
RESERVED

Appendix 9

City's MWSBE, Section 3 and Labor Standards Requirements

CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT
DEPARTMENT

BUILDING A BETTER HOUSTON



FEDERAL LABOR STANDARDS PROVISIONS
MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISES
SECTION 3 REGULATION



www.houston.tx.gov/housing



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FEDERAL LABOR STANDARDS PROVISIONS (HUD-4010)

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance:

A. 1. (I) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv), also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(II) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and Wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination.

The Administrator or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract. HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (I) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(II) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission

to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A 3. iii(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A 3 (i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(e) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration, makes, utters or publishes any statement knowing the same to be false, shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph the terms "laborers and mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of penalties pursuant to the Contract Work Hours and Safety Standards Act. (Public Law 91-54 83 Stat 86); 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

CITY OF HOUSTON'S CODE OF ORDINANCE ARTICLE V. MINORITY, WOMEN, AND SMALL BUSINESS ENTERPRISES

Sec. 15-81. - Declaration of policy.

- (a) It is the policy of the city to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting, as set forth in this article. The purposes and objectives of this article are:
- (1) To promote equal opportunity for participation amongst local minority, women and small business enterprises in all phases of city contracting;
 - (2) To increase the utilization of such local firms in providing certain goods and services;
 - (3) To provide opportunities to broaden and enhance local firms' ranges of capacities; and
 - (4) To increase opportunities for such local firms to serve as contractors, in addition to acting as subcontractors to others, where applicable, in an effort to remedy discriminatory practices and eliminate statistical disparities in city contracting.
- (b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are achieved. At least every five years the city shall make its best efforts to initiate a review of its minority and women business enterprise program, the results of which shall be provided to city council, who shall determine, upon its receipt of recommendations and the consideration of other relevant information from the OBO director, whether there is strong statistical and anecdotal evidence of discrimination against minority and women business enterprises in city contracting warranting the continuation of a race and gender conscious minority and women business enterprise program.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-82. - Definitions.

The following words and phrases, when used in this article and in article VI of this chapter, shall have the meanings provided in this section, unless the context clearly indicates another meaning. For the purpose of these definitions, the singular shall also include the plural, and the plural shall also include the singular.

Bidder means any person or legal entity which submits a bid or proposal to provide labor, goods or services to the city by contract for profit.

Commercially useful function means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE is responsible. In determining whether a MWSBE is performing a commercially useful function, factors including but not limited to the following shall be considered: (1) whether it has the skill and expertise to perform the work for which it is being utilized and possesses all the necessary licenses; (2) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and (3) whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. MWSBEs shall be responsible for performing more than fifty percent of the task or group of tasks being counted toward the applicable participation goal unless subcontracting such task or group of tasks in excess of fifty percent has been expressly authorized via a waiver by the OBO director.

Contractor means any person or legal entity providing goods, labor, or services to the city by contract for profit.

Established business enterprise means a MWSBE or any business applying for certification as a MWSBE that, by virtue of its size meets or exceeds the standards promulgated by the U.S. Small Business

Administration for that category of business, as determined by the procedures described in section 15-87(a) of this Code.

Goal-oriented contract means any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000.00 and for the supply of goods or nonpersonal or nonprofessional services in excess of \$100,000.00:

- a. For which competitive bids are required by law;
- b. Which is not within the scope of the disadvantaged business enterprise programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the initiating city department, in consultation with the OBO director, determines has significant subcontracting potential in fields in which there are adequate numbers of known MWSBEs to compete for and perform the subcontract service(s).

Good faith efforts shall refer to steps taken to achieve a MWSBE goal or other requirements which, by their scope, intensity and usefulness demonstrate a bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract and a contractor's responsibility to put forth measures to meet or exceed a MWSBE goal throughout the duration of the contract.

Joint venture means an association of a MWSBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the MWSBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Local firm, local MWSBE, or locally based when describing a firm or entity seeking certification means a sole proprietorship, partnership, corporation or any other business entity with a significant business presence in the Houston-Sugar Land-Baytown metropolitan statistical area, as defined by the Office of Management and Budget within the Executive Office of the President of the United States. A significant business presence includes the requirement that a MWSBE have an established place of business in the Houston-Sugar Land-Baytown metropolitan statistical area at which one or more of its employees is regularly based and that such place of business has a substantial role in the MWSBE's performance of a commercially useful function.

MWSBE means, collectively, MBEs, WBEs, and SBEs.

Minority business enterprise or MBE means a business which is:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or
- f. A business which has been certified as an MBE by the office of business opportunity under any other recognized MBE program.

Minority person means a citizen or legal resident alien of the United States who is:

- a. Black American, which includes persons having origins in any of the black racial groups of Africa;
- b. Hispanic American, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

- c. Asian-Pacific American, which includes persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, the Federated States of Micronesia, or Hong Kong, or the region generally known as the Far East;
- d. Native American, which includes persons having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut, Native Hawaiian; or
- e. Subcontinent Asian American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

Owned, controlled and managed means that the one or more minority persons or women who own the requisite interests in or assets of a business applying for minority or women business enterprise certification possesses equivalent incidents of such ownership, including an equivalent interest in profit and loss, and has contributed an equivalent percentage of capital and equipment to the business. Contributions of capital and equipment must be real and substantial. In instances where expertise is relied upon to demonstrate ownership, control, and management, it must be shown that the expertise is: (1) in a specialized field; (2) in an area critical to the firm's operation and performance of a commercially useful function; (3) critical to the firm's continued success; and (4) documented in the records of the firm, including but not limited to documentation showing the particular expertise and its value to the firm. Additionally, the individual whose expertise is relied upon must have a significant financial investment in the business. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject business (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse). The one or more minority person or woman owners shall have recognized, ultimate control over all day-to-day business decisions affecting the MBE or WBE and shall hold a title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

Regulated contract means any contract, agreement or other undertaking:

- a. For which competitive bids are not required by law;
- b. That is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and
- c. That the recommending city department has determined, in consultation with the director of the office of business opportunity either:
 - 1. Has significant subcontracting potential in fields in which there are sufficient known MWSBEs to perform the particular subcontract service(s); or
 - 2. Is of a type for which there are sufficient known MWSBEs which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

Small business enterprise or *SBE* means a firm whose gross revenues or number of employees, averaged over the past three years, inclusive of any affiliates as defined by 13 CFR Section 121.103, does not exceed the size standards defined in Section 3 of the Federal Small Business Act and applicable Small Business Administration regulations related to the size standards found in 13 CFR Part 121. The term shall also include a certified minority/women business enterprise defined in this Code.

Subcontractor means any business providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City of Houston.

Woman means a person who is a citizen or legal resident alien of the United States and who is of the female gender.

Women business enterprise or *WBE* means a business which is:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more women; or
- e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- f. A business which has been certified as a WBE by the office of business opportunity under any other recognized WBE program.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-83. - Program elements.

- (a) Based upon a review of annual awards and purchases by affected city departments, the office of business opportunity shall each year submit a progress report to the city council. The report shall include two percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in:
 - (1) The supply of goods and nonpersonal or nonprofessional services; and
 - (2) The performance of personal or professional services;

to the prior year's total local business community utilization and availability to do business in each of the two named fields of city contracting.

In addition, the report shall include percentage figures that are intended to as closely as possible represent the ratio of the prior year's measured utilization and availability of local MWSBEs to do business in construction to the prior year's total local business community utilization and availability to do business in city construction contracting. The report may also include figures and other evidence of factors prescribed in Part 26, Title 49 of the Code of Federal Regulations in the year the report is made that may affect the aforementioned ratio of utilization and availability.

- (b) Based upon the measured utilization and availability and any other relevant factors prescribed in Part 26, Title 49 of the Code of Federal Regulations and identified in the report submitted pursuant to subsection (a) above, city council shall from time to time set annual city-wide percentage goals for city contracting with MWSBEs in each of the two named categories described in subsection (a)(1) and (2) above and for contracting with MWSBEs in the construction category. The adjustment, if any, in the percentage goals shall be made during the first quarter of the fiscal year.
- (c) It is the responsibility of each city department to determine which contracts initiated by it are goal-oriented contracts and which are regulated contracts. If the determination is made that a contract is a goal-oriented contract or a regulated contract, the initiating department shall review the contract and shall determine, by reference to the MWSBE register, the number of certified MWSBEs in each of the two named categories described in subsection (a)(1) and (2), above, and for construction, the number of certified MWSBEs in the construction category. The initiating department director or his or her designee shall determine whether the contract is one to which MWSBE provisions should be applied.
 - (1) These provisions are not required to be applied in the following circumstances:

- a. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy;
- b. The service or goods requested are of such a specialized, technical or unique nature as to require the city department to be able to select its contractor without application of MWSBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants);
- c. If application of MWSBE provisions would impose an unwarranted economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city; or
- d. If the possible MWSBE participation level based on MWSBE availability would produce negligible MWSBE participation.

If one of the above-listed conditions is determined to exist, the department director shall certify that determination in writing prior to the award of the contract, specifying the conditions which lead to the determination, and submit the determination to the OBO director for review and approval.

- (2) If the contract does not fall within one of the above-listed exceptions, based upon its overall review, the initiating department shall assign an appropriate MWSBE participation level, if any, for the contract (whether goal-oriented or regulated) considering the local availability of certified MWSBEs in the contract field.

The intention of this article is to provide administrative flexibility in the application of MWSBE provisions of this Code and in the percentage participation level on a contract-by-contract basis so as not to limit access to city contracting by nonminority-owned, nonwomen-owned or established business enterprises to a greater degree than necessary to meet the city-wide annual goal and the policies and objectives of this article.

- (d) The bidding documents and the contract documents for goal-oriented contracts for which a MWSBE participation level has been established shall contain a provision detailing the purposes and objectives of the city's MWSBE ordinance and shall incorporate by reference this article and the then-current motion or ordinance establishing MWSBE annual goals. Regulated contracts which are determined to have significant subcontracting potential for which a MWSBE participation level has been established shall contain contractual provisions (and proposal provisions if submitted for proposals or for bids) requiring the contractor to meet or exceed the determined MWSBE participation level for that contract, or to establish that it has made good-faith efforts to do so, and that notwithstanding such efforts, was unable to meet or exceed the determined participation levels. The OBO director shall establish procedures defining good-faith efforts. These procedures will be reviewed and approved by the mayor and the city attorney.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-84. - Office of business opportunity.

- (a) Applications for certification as a MWSBE and any addenda thereto shall be made on a form promulgated by the OBO director, and the requirements for certification shall be consistent with the applicable requirements set forth in subsection (b) below.
- (b) The office of business opportunity has responsibility for:
 - (1) Establishing procedures for the implementation of this article, and reviewing and approving procedures established by city departments, such procedures to be narrowly designed to attain the purposes and objectives specified herein without unduly limiting nonminority-owned or nonwoman-owned or established business enterprises. Such procedures shall be reviewed and approved by the mayor and by the city attorney prior to implementation;
 - (2) Certifying businesses as minority, small or women business enterprises and maintaining and distributing to affected city departments a current register, updated monthly, of such business (including a separate listing of such businesses whose applications for certification are pending) specifying the categories of city contracting represented by the certified MWSBEs;

- (3) Developing educational programs for and otherwise assisting (without offering favoritism in relation to the competitive bidding system) MWSBEs to compete effectively for city contracts;
- (4) Making recommendations to the mayor, city council and city departments to further the policies and objectives of this article, including but not limited to assisting city departments in setting contract-specific MWSBE goals;
- (5) Reviewing documentation from potential contractors and from contractors concerning good-faith efforts made to meet or exceed the participation level for contracts. The final recommendation to city council for award or for acceptance of work shall be the city department's, although the office of business opportunity may take exception;
- (6) Compiling a report of the progress of city departments, by department, in attaining the city-wide goals set by city council. This report shall be based upon MWSBE contractor and subcontractor information, to be specified by the office of business opportunity. Upon completion, the report is to be submitted quarterly to city council members, the mayor and all affected city department directors for their information;
- (7) Receiving and reviewing complaints and suggestions concerning the MWSBE program from contractors, MWSBEs and city departments; and
- (8) Without limiting the authority of the office of business opportunity to establish procedures that are consistent with the terms of this article, the office of business opportunity is specifically directed to promulgate and implement procedures as follows:
 - a. Grievance procedures for any person aggrieved by any decision of the office of business opportunity under this article. The procedures shall include notice and a hearing before an impartial hearing officer who shall be appointed by the mayor;
 - b. Mediation procedures for the resolution of disputes between contractors or bidders and MWSBE participants or potential participants with respect to any aspect of compliance with this article, including, without limitation, any assertion that a contractor, subcontractor, or MWSBE has failed to make good faith efforts to comply with this article;
 - c. Procedures to implement and enforce any sanctions provided under this article;
 - d. Procedures to ensure performance of work by MWSBEs, which procedures shall include: (i) a requirement that no more than 50 percent of their work may be subcontracted, without a specific waiver from the office of business opportunity for cause; (ii) a requirement that the minority person, small business or woman owner of a MWSBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified; (iii) a requirement that bidders and contractors make good faith efforts to meet or exceed contract MWSBE goals; and (iv) a requirement that MWSBEs accurately represent all material information required for certification and truly perform a commercially useful function;
 - e. Procedures for counting participation by MWSBEs as prime contractors, subcontractors, suppliers and joint venturers on city contracts, which procedures shall ensure that all work performed by MWSBEs is included in the computation of the progress made toward meeting the annual city-wide goals;
 - f. Procedures to ensure that this article is limited in its application to the certification of locally based MWSBEs;
 - g. Procedures to coordinate the operation of this article with other local MWSBE programs, which may include reliance upon certification procedures of other entities that are determined to be reliable and equivalent to this article;
 - h. Procedures to ensure access to necessary records of prime contractors and subcontractors on city contracts; and
 - i. Procedures for handling theft of services (wage theft) complaints of employees of city contractors and subcontractors.

- (c) MWSBE certification shall be valid for a period of three years from the date of certification; provided, however, all applicants certified as MWSBEs shall be subject to review on an annual basis pursuant to procedures established by the OBO director to ensure compliance with all applicable provisions of this article.
- (d) Applications for renewal of MWSBE certification shall be evaluated under the same criteria and subject to the same manner of review as original applications.
- (e) All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures hereunder shall be maintained in the office of business opportunity for inspection, and copies may be purchased at the fees prescribed by law.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-84.1. - Responsibilities of city departments; department utilization plan.

- (a) Each department director shall be accountable for the oversight and implementation of the following activities:
 - (1) Informing MWSBE organizations or associations of the department's procurement procedures and future procurement opportunities;
 - (2) Ensuring that department bid solicitations and requests for proposals are sent to MWSBEs in a timely manner;
 - (3) Referring MWSBEs to technical assistance services available from the office of business opportunity and other organizations that provide such services;
 - (4) Reviewing each request for waiver or modification of participation goals prior to its submission to the office of business opportunity for approval;
 - (5) Monitoring the department's procurement activities to ensure compliance with and progress towards the city-wide participation goals; and
 - (6) Providing the OBO director with the departmental utilization plan prescribed in subsection (b) of this section and any other documentation requested by the office of business opportunity necessary in evaluating a department's progress in achieving city-wide participation goals.
- (b) Each department that has procured goods and services in excess of three million dollars during the fiscal year ending on June 30th of the preceding calendar year shall be required to submit a departmental utilization plan for the following fiscal year commencing on July 1st. Departmental utilization plans shall be submitted on or before June 15, 2014, and not later than June 15th of each calendar year thereafter.
- (c) Each department director shall be responsible for creating, submitting, and implementing an annual departmental utilization plan that shall include, at a minimum, the following:
 - (1) The department's forecast of anticipated projects and contract specific goals for the upcoming fiscal year;
 - (2) A detailed, written explanation for any departmental goal that is not consistent with the overall city-wide goals for MWSBE participation;
 - (3) A list of the names and titles of department personnel responsible for the implementation of the departmental utilization plan;
 - (4) The methods and relevant activities proposed for achieving the department's participation goals; and
 - (5) Any other information the department director deems relevant or necessary.
- (d) Upon review by the OBO director, all departmental utilization plans shall be submitted to the mayor and city council for final approval.
- (e) A departmental utilization plan may be amended to reflect changes in the department's projected procurements, expenditures, or other relevant circumstances and resulting changes in the department's participation goals. Such amendments shall be submitted to the OBO director for review and shall be submitted to city council for final approval not less than 30 days prior to the proposed date of implementation.

- (f) Each department director shall be accountable for setting and making reasonable efforts to meet the participation goals stated its departmental utilization plan. Departments shall, at minimum, engage in outreach activities that encourage eligible businesses to apply for certification as MWSBEs and encourage MWSBEs to participate in all facets of the procurement process and compete for city contracts, including contracts awarded by negotiated acquisition and emergency and sole source contracts.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-85. - Filing of plan.

Before execution of any contract or issuance of any purchase order for which a MWSBE goal has been established, a bidder or potential contractor shall submit a plan setting forth how it intends to meet the contract MWSBE goal or documentation demonstrating its proof of good faith efforts to meet the contract MWSBE goal. After execution of a contract or receipt of a purchase order, the contractor shall comply with the submitted plan, unless it has received approval from the OBO director for a deviation therefrom. Approval shall not be unreasonably withheld. While it is not a requirement that a contractor meet its goal, it is required that the contractor objectively demonstrate to the office of business opportunity that it has made good faith efforts to meet the goal. To this end, the contractor shall maintain records as prescribed by the office of business opportunity demonstrating its efforts at compliance. The contractor shall be required to submit to the office of business opportunity reports of its efforts under this article in such form or manner as shall be prescribed by the OBO director.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-86. - Sanctions.

- (a) The OBO director is authorized to suspend any contractor who has failed to make good faith efforts to meet any goal established under this article from engaging in any contract with the city for a period up to, but not to exceed, five years. The OBO director is also authorized to suspend any MWSBE who has failed to make good faith efforts to meet all requirements necessary for participation as a MWSBE from engaging in any contract affected by this article for a period up to, but not to exceed, five years.
- (b) In accordance with section 15-84 of this Code, the office of business opportunity shall establish procedures for the imposition of sanctions and shall ensure that no sanction is imposed without notice of the grounds being given and an opportunity for a hearing consistent with the procedures set forth in sections 15-22, 15-23, and 15-24 of this Code. Any procedure established shall be consistent with state law.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-87. - Determination of established business enterprise status.

- (a) Based upon a review of data submitted by MWSBEs or MWSBE applicants and any other information available from its files or the files of any other governmental entity, the office of business opportunity shall determine the size of each MWSBE or MWSBE applicant by determining the average of the gross receipts for the prior three years and the average number of employees for the 12 calendar months immediately preceding the review, as applicable. The calculation of size shall be based solely upon the size standards and methods of calculation identified by the U.S. Small Business Administration (SBA) including, without limitation those set forth in 13 C.F.R. part 121, subpart A, secs. 121.101 through 121.107, and sec. 121.201, any amendment or successor thereto, or any other document defining such size standards or the calculation thereof that has been fully and finally adopted by the SBA. The review shall be applicable to business entities applying for initial certification as a MWSBE or to certified MWSBEs, provided that such review may not be initiated until the applicant or certified MWSBE has established a business history of sufficient length to allow calculation of size based on the three year financial or 12 month employee data, as applicable.
- (b) Following the review described in this section, each certified MWSBE or MWSBE applicant shall be re-evaluated under this section on an annual basis based upon the size standards and methods of calculation

identified by the SBA and procedures established by the OBO director to ensure compliance with all applicable provisions of this article.

- (c) All MWSBEs and MWSBE applicants shall, upon written request of the OBO director, provide to the office of business opportunity copies of any and all documents, including without limitation financial statements and tax records, requested by the director in connection with the review authorized in subsection (a) of this section, not later than 20 business days following the date of mailing of the request. Failure to timely and completely comply with any such request will authorize the imposition of sanctions under section 15-86 of this Code, or denial of certification in the case of a MWSBE applicant.
- (d) Following the review authorized by subsection (a) of this section, the office of business opportunity shall classify each MWSBE or MWSBE applicant whose size meets or exceeds the size standard identified by the SBA for that class of enterprise as an established business enterprise. The classification shall be effective as of the date of mailing of the notice provided in section 15-88 of this Code.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-88. - Notice, appeal and waiver.

- (a) Immediately upon classification of a certified MWSBE or MWSBE applicant as an established business enterprise pursuant to section 15-87 of this Code, the office of business opportunity shall notify the business so classified of the action by United States certified mail, return receipt requested, addressed to the last known address of the business and deemed given when placed in a United States mail depository.
- (b) Each notice shall inform the affected MWSBE or MWSBE applicant of the following matters: (1) That the MWSBE or MWSBE applicant has been classified as an established business enterprise;
- (2) That the classification is effective as of the date of mailing of the notice;
- (3) That the MWSBE or MWSBE applicant may appeal the classification or seek a waiver of the classification pursuant to the procedures established under this section;
- (4) That the provisions of section 15-89 of this chapter shall become enforceable with respect to any certified MWSBE one year following the notice of classification, unless the decision is reversed or a waiver is granted and the classification is withdrawn prior to the expiration of the one-year period; and
- (5) That any MWSBE applicant deemed ineligible for certification based upon its classification as an established business enterprise shall remain ineligible for certification unless and until any withdrawal of the classification as an established business enterprise is granted pursuant to an appeal or a request for waiver conducted under this section.
- (c) In order to appeal a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that the office of business opportunity has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error. If the OBO director finds that an error or errors were made in calculating the size of the business and that any such error resulted in an incorrect classification as an established business enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal. If the OBO director finds that no error was made, or that any error would not materially alter the classification, he shall notify the business that the classification is not altered, by certified mail, return receipt requested. The business may within ten days of the date of mailing of the notice submit to the OBO director a written request for a hearing, which hearing shall be conducted under the procedures set forth in subsections (e) through (g) of this section.
- (d) In order to seek a waiver of a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:

- (1) Profitability of the enterprise;
 - (2) Sales of the enterprise, including a demonstration that 55 percent or more of the enterprise's sales, within the period utilized by the office of business opportunity in its classification determination, are not related to city contracts;
 - (3) Ability of the MWSBE or MWSBE applicant to obtain bonding, if the enterprise acts as a prime contractor or in a category in which obtaining bonding is required; and
 - (4) Positive comparison of the enterprise's business and financial profile with those of non-MWSBE firms in the same business category based on an objective industry standard.
- (e) The OBO director shall notify the affected MWSBE or MWSBE applicant of the place and time of a hearing before the OBO director or his designee to consider an appeal requested under subsection (c) of this section, or a request for waiver of the classification under subsection (d) of this section, or both, as applicable, by United States certified mail, return receipt requested. The hearing shall be set not later than 30 days following receipt of the request, provided that the OBO director or his designee may in his discretion extend such date by a reasonable period for good and sufficient cause shown. Hearings for businesses that have both appealed under subsection (c) of this section and requested a waiver under subsection (d) of this section may be consolidated in a single hearing at the discretion of the OBO director or his designee.
 - (f) The OBO director shall promulgate written procedures for the conduct of hearings. The OBO director or his designee shall hear each appeal or request for waiver and shall consider only the criteria set forth under subsections (c) and (d)(1) through (d)(4) of this section, as applicable, in determining whether to withdraw the classification of the affected business as an established business enterprise. The OBO director shall develop objective standards for evaluating each factor set forth under subsections (d)(1) through (d)(4) based upon recognized industry or governmental practices or standards. The burden shall be on the business to demonstrate by clear, convincing and cogent evidence either that a material error in classification was made or that the granting of a waiver is justified by at least two of the criteria set forth in subsections (d)(1) through (d)(4) of this section.
 - (g) Notwithstanding any provision of this Code or of the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, the decision of the OBO director or his designee regarding appeal or waiver shall be final.

(Ord. No. 2013-428, § 10(Exh. A), 5-8-2013, eff. 7-1-2013)

Sec. 15-89. - Effect of classification; re-application.

- (a) Upon the expiration of one year following the notice of classification as an established business enterprise referenced in section 15-88(a) of this Code, and in the absence of any withdrawal of such classification by the OBO director, each certified MWSBE so classified shall be ineligible for future participation in any city contract as a MWSBE and its certification shall be withdrawn. No application for re-certification shall be granted absent the prior determination of the OBO director that the applicant does not meet or exceed the SBA size standards referenced in section 15-87(a) of this Code. Certified businesses whose evaluation results in classification as an established business enterprise shall timely file any re-certification application due prior to expiration of the one year extension of program eligibility referenced in this section, but the application shall not be granted unless and until the classification is withdrawn or waived.
- (b) Notwithstanding any provision of this Code or the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, any initial applicant for MWSBE certification who meets the criteria for an established business enterprise at the time of its application and is so classified shall be denied certification on that basis alone and shall have no recourse for the denial except through challenging the classification in the manner set forth in section 15-88 of this chapter. Any and all other matters pertaining to the eligibility of the applicant shall be abated and shall only be reinstated if the classification as an established business enterprise is withdrawn.
- (c) The office of business opportunity may continue to assist established business enterprises following ineligibility as follows:

- (1) Such businesses, if formerly certified by the city, may continue to be listed in any listing of MWSBE firms in a separate category of established MWSBE firms for the information of other private or public entities; and
 - (2) Such businesses, if formerly certified by the city, may receive information, counseling and referrals to other agencies supporting business enterprises from the office of business opportunity after their classification as established business enterprises.
- (d) No sooner than one year following the date of program ineligibility provided in subsection (a) of this section or the denial of certification provided in subsection (b) of this section, any established business enterprise may apply for reinstatement as a fully eligible, certified MWSBE or reinstatement of an application for certification abated under subsection (b) of this section, as applicable, upon demonstrating the existence of one or more of the following conditions:
- (1) That the subsequent history from the date of initial classification as an established business enterprise demonstrates that a size calculation as of the date of application for reinstatement would place the business below the SBA size standards for that category of business;
 - (2) That the established business enterprise has successfully obtained an SBA size determination from a federal agency authorized to make such a determination, or has prevailed in an SBA size protest under 13 CFR § 121.1001, et seq., as amended, including any judicial review thereof, establishing that the business does not meet or exceed the applicable SBA size standard;
 - (3) That the SBA size standards have been revised in such a manner that the subject business no longer meets or exceeds the size standard for its category based upon the most recent three-year average for receipts or 12 month average for employees, as applicable; or
 - (4) That the criteria listed in section 15-88(d) of this Code demonstrate the need to grant a waiver and withdraw the classification of the business as an established business enterprise.
- (e) Applications for reinstatement shall be on a form prescribed by the OBO director and shall be accompanied by relevant documentary evidence supporting the ground or grounds for reinstatement asserted, as requested by the OBO director.
- (f) Within 30 days following receipt of a completed application for reinstatement, the OBO director shall grant the application or deny the application and set the matter for hearing within 30 days of the date of mailing notice of such denial.
- (g) The burden on the business applying for reinstatement shall be to demonstrate the existence of one or more of the conditions set forth in subsections d(1) through d(4) of this section by clear, convincing and cogent evidence, to be evaluated by the director under hearing procedures consistent with the nature of the application and, to the extent applicable, with the provisions of subsections (c), (d), (e) and (f) of section 15-88 of this Code. In addition, a business seeking reinstatement under subsection (b)(4) of this section that has previously sought a waiver of classification as an established business enterprise pursuant to section 15-88(d) of this chapter must present evidence of a material and substantial change in circumstances not shown at the preceding hearing, and the OBO director or his designee shall disregard evidence that is repetitious or cumulative of the prior hearing on the matter.
- (h) The decision of the OBO director or his designee following a hearing on reinstatement shall be final, and any applicant denied reinstatement is to be notified in writing of the decision within ten days following the hearing. No business denied reinstatement may subsequently apply for reinstatement until the expiration of one year from the date of the denial.

(Ord. No. 2013-428, § 10 (Exh. A), 5-8-2013, eff. 7-1-2013)

**REQUIREMENTS FOR THE CITY OF HOUSTON PROGRAM FOR
MINORITY, WOMEN, AND SMALL BUSINESS ENTERPRISES (MWSBE) AND
PERSONS WITH DISABILITIES ENTERPRISES (PDBE)**

CONSTRUCTION CONTRACTS

I. GENERAL

A. CITY AUTHORITIES

1. The "OBO Director" is the City of Houston's Office of Business Opportunity Director, or his or her designee.

City of Houston
611 Walker Street, 7th Floor
Houston, Texas 77002

2. The "Contracting Department" for this Project is the City of Houston Department specified in Document 00520 – Agreement.
3. The "Project Manager" for this Project is specified in Document 00550, Contract Approval Notification.

II. REOCCURRING REPORTS THAT MUST BE SUBMITTED DURING THE COURSE OF THE CONTRACT:

A. MWSBE MONTHLY REPORT PROCESS

The Contractor shall complete the MWSBE Monthly Utilization Report in the Contract Compliance and Monitoring System (available at <https://houston.mwdbe.com/>).

- B. The Contractor shall comply with further, applicable instructions regarding reporting and compliance as provided in Sections III.E and III.I below.

III. BUSINESS ENTERPRISE PROGRAM REQUIREMENTS:

A. PURPOSE

This Document facilitates implementation of City of Houston, Tex. Code of Ordinances Chapter 15, Article V, § 15-81 *et seq.*, relating to MWSBE contract participation, and Code of Ordinances Chapter 15, Article VI, § 15-90 *et seq.*,

relating to PDBE contract participation (collectively, the "Business Enterprise Program or "MWSBE"). City of Houston, Tex. Ordinance 2013-0428, May 8, 2013.

B. POLICY

It is the policy of the City to encourage the full participation of Minority and Women-owned Business Enterprises, Small Business Enterprises, and Persons with Disabilities Business Enterprises in all phases of its procurement activities and to afford them a full and fair opportunity to compete for City contracts at all levels.

C. POLICY ELEMENTS

1. The Contractor agrees to ensure that MWSBE firms have a full and fair opportunity to participate in the performance of City contracts. In this regard the Contractor shall make all reasonable Good Faith Efforts to meet the Contract Goals for this Contract.
2. The Contractor and any Subcontractor shall not discriminate on the basis of race, color, religion, national origin, or sex in the performance of City contracts.
3. Contractor's performance in meeting the Participation Plan Percentage will be monitored during the construction phase of the Contract by the Office of Business Opportunity ("OBO") and the Contracting Department (the "Department").

D. PERCENTAGE GOALS

The MWSBE goals and PDBE goals, if any, for the Work are specified in Document 00800 – Supplementary Conditions Goals.

E. CONTRACTOR RESPONSIBILITIES

1. **Prior to Award:**

The Bidder shall submit MWSBE documents in accordance with the requirements of Document 00410 – Bid Form Part A.

 - a. In accordance with the Code of Ordinances and the OBO Good Faith Efforts Policy (Attachment A), the Department shall approve an Apparent Low Bidder's MWSBE Participation Plan, Document 00470 (the "Bidder's Plan" or "Plan"), within three business days of the Bid Opening only if the Department representative determines that Bidder's Plan meets the advertised Contract Goal and is administratively complete.

- b. If the Department cannot approve the Bidder's Plan, it shall forward the Plan to OBO, who shall review the Bidder's Plan, and if applicable, the Bidder's Document 00471 (Record of Good Faith Efforts) and Document 00472 (Pre-Award Deviation Request) and determine whether the Bidder has made Good Faith Efforts to meet the Contract Goals within 10 business days of the Bid Opening.
- c. If OBO determines that the Bidder has failed to provide a valid participation plan or make Good Faith Efforts or if the Bidder fails to provide documents and associated information required by this Document 00808 or reasonably requested in writing by OBO, OBO may declare the Bidder to be non-responsible.
- d. If OBO determines that the Bidder has made Good Faith Efforts, OBO may approve the Bidder's Contract Goal Deviation request. Thereafter, the Bidder/Contractor shall be bound by the Plan, as approved or modified by OBO.
- e. The Contractor shall:
 - (1) ensure that all MWSBE firms listed in the Plan are certified by the Office of Business Opportunity prior to bid date. Qualified, non-certified firms may obtain priority consideration for certification if no more than two firms are certified with the same capability as the non-certified firm.
 - (2) execute written contracts with all certified Subcontractors and Suppliers. All such contracts must be executed and sent to OBO and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of Document 00700, General Conditions; and
 - (3) designate an MWSBE liaison officer who will administer the Contractor's MWSBE program and who shall document and maintain records of Good Faith Efforts to subcontract with MWSBE Subcontractors and Suppliers.

2. After Award:

- a. The Contractor shall submit MWSBE Monthly Utilization Reports, as requested in Article II above.
- b. The Contractor shall complete and submit to OBO a deviation request if the Contractor reasonably believes that it will not achieve the Business Enterprise Program Participation Plan Percentage documented in the Plan. The Contractors shall also submit to OBO, with a copy to the Contracting Department, a Record of Post-Award Good Faith Efforts (Document 00571) for each Certified Firm that the Contractor does not use in accordance with the Approved Plan before the Contractor uses another firm to perform the work.
- c. The Contractor shall conform to the Plan unless OBO approves a

deviation request. OBO shall approve or reject a request for deviation within five business days of receipt of the request.

- d. OBO shall approve a deviation request if:
 - (1) for a reason beyond the Contractor's control, the Contractor is unable to use the certified MWSBE firm in the Plan to perform the specified work. In such cases, the Contractor shall use and document Good Faith Efforts to find a similarly qualified, certified MWSBE firm to perform such specified work; or
 - (2) the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the Contracting Department is unlikely to meet the terms of the Plan. In such cases, the Contractor shall use and document Good Faith efforts to achieve a reasonable amount of MWSBE participation on the remaining work on the Contract.
 - (3) OBO shall not unreasonably withhold approval of a deviation request.
- e. After the Date of Substantial Completion, OBO shall evaluate the Contractor's Good Faith Efforts towards meeting the Plan, as it may be amended.
- f. If the Contractor fails to conform to the Plan and fails to submit a Post-Award Deviation Request or provide documents and associated information required by the Good Faith Efforts Policy or reasonably requested in writing by OBO, OBO may impose sanctions in accordance with Article VI of this Document 00808.

F. ELIGIBILITY OF MWSBE FIRMS FOR SUBCONTRACTING

- 1. To ensure that the City's Business Enterprise Program benefits only those firms that are owned and controlled by a minority person(s), a woman (women), a person(s) with a disability, or a small business enterprise, the Office of Business Opportunity will certify the eligibility of MWSBE and PDBE Contractors, Subcontractors, and Suppliers. Contact the OBO Certification Division at 832-393-0600 for information regarding certification.
- 2. Firms must be certified by OBO at the time of bid in order to be counted towards meeting MWSBE goals. OBO maintains a Certified Minority, Women and Small Business Enterprises and Persons with Disabilities Business Enterprises Directory on the City's website. This Directory also lists federally-designated Disadvantaged Business Enterprises (DBEs).

G. DETERMINATION OF MWSBE PARTICIPATION

MWSBE participation shall be counted toward meeting the Contract Goals in

response to the following:

1. Contractor may count toward its Contract Goals only those MWSBE Subcontractors/ Suppliers performing a Commercially Useful Function.
 - a. **COMMERCIALLY USEFUL FUNCTION** means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including but not limited to the following shall be considered: (1) whether the firm has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses; (2) whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized; and (3) whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. Without limiting the generality of the foregoing, a MWSBE will not be considered to be performing a commercially useful function, if it subcontracts more than 50 percent of a contract being counted toward the applicable Contract Goals, unless such subcontracting in excess of 50 percent has been expressly approved by OBO either pre-bid or post award.
 - b. OBO shall approve a Plan Deviation Request if the Contractor demonstrates that the industry standard for the type of work involved is to subcontract over 50 percent of the work.
2. Once a firm is certified as a MWSBE firm, the total dollar value of the subcontract awarded to the MWSBE firm is counted toward the Contract Goals, counting only the work in which the MWSBE has performed a Commercially Useful Function. The use of one MWSBE certified firm to meet multiple goals (e.g. MBE, WBE, SBE goals) on a contract is prohibited, unless expressly approved by OBO. Safety and Participation goals do not count as a single goal concerning MWSBE/DBE requirements.
3. The dollar value of the work performed by a certified Prime Contractor may not be counted toward the MWSBE goal unless the certified Prime Contractor is a part of a joint venture. When the Contractor or Subcontractor is in a joint venture with one or more MWSBE firms, OBO shall determine the percent of participation resulting from such joint venture to be counted toward the Contract Goals. The City may count towards the Contractor's MWSBE contract goal that portion of the total value of the contract amount paid to an MWSBE joint venturer equal

to the distinct, clearly defined portion of the contract work performed by the MWSBE.

4. A MWSBE Supplier's participation will be counted towards the MWSBE goals if all of the following criteria are met. The MWSBE Supplier must:
 - (a) negotiate price;
 - (b) determine quality and quantity;
 - (c) order the materials;
 - (d) show that the invoice is in the certified firm's name;
 - (e) pay for the material itself;
 - (f) control delivery; and
 - (g) be certified to provide the supplies in the appropriate NAICS code.

If the listed criteria above are not met, only the entire amount of fees or commissions charged for assistance in the procurement of the supplies and materials, or fees or transportation charges for the delivery of supplies or materials required on a job site will be counted towards the MWSBE goal. To be counted, proof must be provided of the fees paid and the fees must be reasonable and not excessive as compared with fees customarily allowed for similar services. MWSBE Supplier participation may account for no more than 50% of the MWSBE participation plan.

5. The OBO Policy and Procedures Manual, as amended from time to time, shall apply to the Contract for other determinations regarding counting MWSBE participation not explicitly provided for in the Contract.

H. CONTRACTOR COMPLIANCE

To ensure compliance with MWSBE requirements, OBO and the Department will monitor Contractor's efforts regarding MWSBE Subcontractors/Suppliers during the performance of this Contract. This may be accomplished through the following: job site visits; reviewing of records and reports; and interviews of randomly selected personnel.

I. RECORDS AND REPORTS

1. In accordance with II.A of this Document, the Contractor shall submit an initial report outlining MWSBE participation 40 days after the Notice to Proceed date, and on or before the 15th day of each month thereafter until all MWSBE subcontracting or material supply activity is completed. Each report shall cover the preceding month's activity. The Contractor shall use the MWSBE Contract Compliance and Monitoring System (B2G Now) to meet this requirement.
2. Contractor shall maintain the following records for review upon request by OBO or the Department:

- a. Copies of executed Subcontractor agreements and purchase orders;
 - b. Documentation of payments and other transactions with MWSBE Subcontractors/ Suppliers; and
 - c. Appropriate explanations of any changes or replacements of MWSBE Subcontractors/Suppliers. All replacement MWSBE Subcontractors/Suppliers must be certified by OBO.
 - d. Any other records required by OBO or Contracting Department.
3. If a Participation Plan Percentage is not being met, the monthly report shall include a narrative description of the progress being made in MWSBE participation. If sufficient MWSBE Subcontractors or Suppliers to meet the Participation Plan Percentage are being utilized, they should be identified by name and the dollar amount paid to date for work performed or materials furnished by each MWSBE during the monthly period. Reports are required when no activity has occurred in a monthly period.
4. Contractor shall retain all such records for a period of four years following completion of the Work and shall be available at reasonable times and places for inspection by authorized representatives of the City including the City Controller.

IV. SANCTIONS:

A. SUSPENSION PERIOD AND WAIVER

Pursuant to Section 15-86 of the Code of Ordinances, OBO is authorized to suspend any Contractor who has failed to make Good Faith Efforts for a period of up to, but not to exceed, five years.

B. GUIDELINES FOR IMPOSITION OF SANCTIONS

1. General:

- a. OBO shall not impose any sanction except upon evidence of specific conduct on the part of a MWSBE or Contractor that is inconsistent with, or in direct contravention of, specific applicable requirements for Good Faith Efforts.
- b. Imposition and enforcement of suspensions shall be consistent with applicable state law.

2. Severity of Sanctions:

- a. In determining the length of any suspension, OBO shall consider the following factors:
 - (1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively,

may be reasonably concluded to have resulted from a misunderstanding on the part of the Contractor or MWSBE of the duties imposed on them by Article V of Chapter 15 of the Code of Ordinances and these procedures;

- (2) The number of specific incidences of failure by Contractor or MWSBE to comply;
- (3) Whether the Contractor or MWSBE has been previously suspended;
- (4) Whether the Contractor or MWSBE has failed or refused to provide OBO with any information requested by OBO's Director or required to be submitted to OBO's Director pursuant to law or these procedures;
- (5) Whether the Contractor or MWSBE has materially misrepresented any applicable facts in any filing or communication to OBO; and
- (6) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

- b. Suspensions may be for any length of time not to exceed five years. Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the Contractor or MWSBE has been previously suspended, or other similarly egregious conduct.

C. APPEALS

A decision to implement a suspension may be taken after notice and an opportunity for an informal conciliation conference with OBO and a hearing by the Contract Compliance Commission. Commission members shall not have participated in the actions or investigations giving rise to the suspension hearing.

D. NOTICE

1. Prior to imposing any suspension, OBO shall deliver written notice to the Contractor or MWSBE setting forth the grounds for the proposed suspension and setting a date, time, and place to appear for an informal conciliation conference with OBO, in addition to information regarding the appearance before the Contract Compliance Commission for a hearing on the matter.
2. Any notice required or permitted to be given hereunder to any Contractor or MWSBE may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to their

most recent address as specified in the records of the Office of Business Opportunity or in the Contract if no address is on file with the Office of Business Opportunity.

E. HEARING PROCEDURES

Proceedings before the Contract Compliance Commission shall be conducted in accordance with Section 15-23 of the Code of Ordinances. If the Commission, in a written decision, finds that a suspension is supported by the evidence presented, the Commission shall submit its recommendation to the Mayor and City Council.

ATTACHMENT A

City of Houston
Office of Business Opportunity
Good Faith Efforts Policy

General Policy.

Good Faith Efforts are steps taken to achieve an Contract Goal or other requirements which, by their scope, intensity and usefulness demonstrates the bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract, as well as the contractor's responsibility to put forth measures to meet or exceed the Contract Goal throughout the duration of the contract.

Good Faith Efforts are required to be made and demonstrated by an apparent successful bidder on goal oriented contracts or proposer on a regulated contract prior to award of a contract. Good Faith Efforts are required on professional services and construction contracts and on procurement of goods and non-professional service contracts with goals. If a bidder, when submitting a participation plan at the time of bid or proposal submission, anticipates it cannot or will not meet the Contract Goal prior to the award, the bidder must demonstrate to Office of Business Opportunity ("OBO") it has made Good Faith Efforts to meet the Contract Goal, to be eligible for the contract award.

Good Faith Efforts shall be evaluated on a case-by-case basis in making a determination whether a bidder or contractor is in compliance with this policy. The efforts employed by a bidder or contractor should be those that one could reasonably expect a bidder or contractor to take if the bidder were actively and aggressively attempting to obtain MWSBE participation sufficient to meet the Contract Goal. Efforts taken that are mere formalities or other perfunctory acts shall not be considered Good Faith Efforts to meet Contract Goals.

The factors provided herein are representative of the types of actions OBO will consider in determining whether the bidder or contractor made Good Faith Efforts to obtain MWSBE participation to meet the Contract Goal. The factors prescribed below are not intended to be a mandatory checklist, nor is it intended to be exhaustive or exclusive. OBO may consider other factors or types of efforts that may be relevant in appropriate cases.

If a contractor fails to submit Good Faith Efforts documentation as provided in this Policy, it waives the right to appeal OBO decisions related to this Policy. OBO will review all the efforts made by the contractor, including the quality and quantity of those efforts.

Pre-Award.

A bidder must submit a participation plan (Document 00470) to OBO at the time the bidder

submits the bid. If the participation by certified MWSBE subcontractors documented on the participation plan ("participation") is less than the Contract Goal, a bidder should submit a Record of Good Faith Efforts (Document 00471) with the bid. A bidder should also submit a request for a deviation (Document 00472) if the bidder, having used Good Faith Efforts, reasonably believes that it cannot meet the Contract Goal or a commercially useful deviation.

In making a determination that the bidder has made a good faith effort to meet the Contract Goals, OBO shall consider specific documentation¹ concerning the steps taken to obtain MWSBE participation, with a consideration of, by way of illustration and not limitation, whether the bidder demonstrated a genuine effort to comply with the following factors.

1. Attended any pre-bid or pre-proposal meetings scheduled by the City Department;
2. Followed up with MWSBEs that attended the pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities and contacted MWSBEs listed in the City's online directory;
3. Conducted outreach with minority and women focused organizations and associations far in advance of solicitation due date (no less than 10 business days);
4. Identified and designated portions of the work to be performed by MWSBEs to increase the likelihood of meeting the Contract Goals (including where appropriate breaking down the contract into reasonably sized subcontracts to ensure participation);
5. Advertised subcontracting opportunities in news media focused towards minority and women persons far in advance of solicitation due date;
6. Provided MWSBEs with a point of contact that was knowledgeable about the project and possessed decision-making authority to answer questions from interested MWSBEs;
7. Provided a reasonable number of MWSBEs certified with timely written notices via email, mail, and/or fax and/or with documented contact regarding the subcontracting/supplier opportunities. A "reasonable number of MWSBEs" shall be based on the number of MWSBEs available in the directory;
8. Solicited the MWSBEs within a reasonable amount of time (no less than seven business days) before bid submission, as well as followed up with the MWSBEs solicited to determine if they were interested in submitting a bid or proposal or participating on a team.

¹ A list of common supporting documentation that may allow Contractors to support their good faith efforts can be found on the Office of Business Opportunity website at www.houstontx.gov/obo.

9. Provided interested MWSBEs certified to perform the solicited work with prompt access to the plans, specifications, scope of work and requirements of the contract;
10. Negotiated in good faith with interested MWSBEs, and not rejecting MWSBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
11. Entered into a formal contract, or signing enforceable letters of intent with MWSBEs;
12. Provided an explanation to any MWSBE whose bid or price quotation is rejected, unless another MWSBE is accepted for the same work, as follows:
 - a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected MWSBE firm;
 - b. Where price competitiveness is the reason for rejection, a meeting must be held with the price-rejected MWSBE, if requested, to discuss the rejection;
13. Made efforts to assist interested MWSBEs in obtaining bonding, lines of credit, insurance required for the contract, and documenting MWSBE denied by bona fide surety agents;
14. Ensured that the conditions and requirements for subcontracts are commensurate with industry standards and would not cause an economic hardship on MWSBEs, such as unnecessary insurance or coupling bid bonds with retainage;
15. Incorporated efforts not attempted earlier or on previous bids that appear more likely to lead to attaining the Contract Goal. Past performance on similar contracts with similar scopes will also be taken in consideration when determining Good Faith Efforts. A bidder that continues to make same efforts without any significant change in the level of participation may not be making Good Faith Efforts.

Post-Award.

The contractor must sign the approved participation plan (Document 00470 or Document 00570) prior to starting work on the Project. A contractor should submit a request for deviation (Document 00572) from OBO if the contractor, having made Good Faith Efforts, reasonably believes that it will not achieve the Participation Plan Percentage documented in the approved participation plan. Unless OBO approves a deviation, a contractor must submit to OBO a Participation Summary (Document 00660) prior to City Council's consideration of any close-out, term extension, or change order. If participation is less than anticipated in the approved

participation plan, the contractor must submit a Record of Good Faith Efforts (Document 00571) along with the Participation Summary. A contractor that fails to submit a deviation request and Good Faith Efforts documentation waives the right to appeal OBO decisions related to this Policy.

If the contractor is awarded the contract and fails to achieve the established Participation Plan Percentage, the contractor must demonstrate to OBO its efforts to meet the Participation Plan Percentage and failure to do so based on circumstances that the contractor could not reasonably control. In determining whether the contractor made Good Faith Efforts to ensure full participation and achievement of the Participation Plan Percentage, OBO shall consider the following factors:

1. Whether the contractor designated an MWSBE liaison officer to administer the Contractor's MWSBE programs and to be responsible for maintenance of records of Good Faith Efforts.
2. Whether the contractor furnished prompt MWSBE Utilization Reports in a timely and accurate manner through the online Contract Monitoring System or via hard copy.
3. Whether the contractor responded to efforts to resolve disputes with MWSBEs, and genuinely attempted to resolve these issues.
4. Whether the contractor disclosed payment discrepancies timely and within the monthly reporting period;
5. Whether the contractor complied with the participation plan, unless the contractor received a deviation from the OBO Director and whether upon approval, the contractor made Good Faith Efforts to replace a removed MWSBE with another certified firm;
6. Whether the contractor furnished prompt written responses to written inquiries from the Director or any employee of OBO regarding the MWSBE's performance or information germane to the MWSBE's certification;
7. Whether the contractor ensured that at all times during the performance of any contract or subcontract the MWSBE firm is engaging in a commercially useful function as that term is defined in Chapter 15 of the City of Houston Code of Ordinances;
8. Whether the contractor provided the OBO information, or other material, that was factually accurate and free of material misrepresentation; and
9. Whether the contractor furnished prompt responses to requests for information, books and records needed to verify compliance from the department administering the Contract, the City Attorney and the City Controller;

10. Whether the contractor attended all meetings and mediation hearings as requested by the Director or his/her designee; and
11. How the contractor may be affected by change orders, with consideration given to the size of the change orders.

Change Orders.

The requirement to make Good Faith Efforts to achieve the approved Participation Plan Percentage is applicable to change orders. Contractors should make Good Faith Efforts to ensure that the Participation Plan Percentage remains substantially the same after the issuance of change orders. If a contractor cannot maintain substantially the same level of participation provided in the latest approved Participation Plan (Document 00470 or Document 00570) due to a change order, the contractor shall submit to the OBO Director and Contracting Department a Document 00571 (Post-Award Record of Good Faith Efforts) and Document 00572 (Post-Award Plan Deviation Request) in a timely manner that does not cause disruption to the project. In addition to other relevant factors, in evaluating whether Good Faith Efforts were made by the contractor to meet the Participation Plan Percentage despite change orders, the OBO Director shall consider the contractor's efforts to timely and efficiently deliver the project.

END OF DOCUMENT

SECTION 3 REGULATION

§ 135.1

APPENDIX TO PART 135

AUTHORITY: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

SOURCE: 59 FR 33880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

Subpart A—General Provisions

§ 135.1 Purpose.

- (a) *Section 3.* The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low- income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low- income persons.
- (b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.

- (a) *Section 3 covered assistance.* Section 3 applies to the following HUD assistance (section 3 covered assistance):
- (1) *Public and Indian housing assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising from the

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expenditure of the following public and Indian housing assistance:

(i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and

(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) *Housing and community development assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects;

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; and

(iii) Other public construction.

(3) *Thresholds—(i) No thresholds for section 3 covered public and Indian housing assistance.* The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contractor subcontract.

(ii) *Thresholds for section 3 covered housing and community development assistance—(A) Recipient thresholds.* The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.

(B) *Contractor and subcontractor thresholds.* The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

(C) *Threshold met for recipients, but not contractors or subcontractors.* If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

(b) *Applicability of section 3 to entire project or activity funded with section 3 assistance.* The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) *Applicability to Indian housing authorities and Indian tribes.* Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Other HUD assistance and other Federal assistance.* Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms *Department*, *HUD*, *Indian housing authority (IHA)*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under

which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection.

with section 3 covered projects (as described in § 135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of "section 3 resident" in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area. *Other HUD programs* means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for "section 3 covered projects," as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963. *Recipient* means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section—

- (1) That is 51 percent or more owned by section 3 residents; or

- (2) Whose permanent, full-time employees include persons, at least 30 per cent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all sub-contracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Section 3 clause means the contract provisions set forth in § 135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means:

- (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;
- (2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;
- (3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;
- (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:
 - (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
 - (ii) Housing construction; or
 - (iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and

materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See § 135.40. Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) *A low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) *A very low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that

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such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of "section 3 resident" in this section.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section. [59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however*, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may

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not be redelegated by the Assistant Secretary.

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part 135.* All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part

135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.*

(1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed \$200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) *Section 3 as NOFA evaluation criteria.* Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

§ 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) *Procurement standards for States and local governments (24 CFR 85.36)*—(1) *General.* Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) *Flexible Subsidy Program.* Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) *Procurement standards for other recipients (OMB Circular No. A-110).* Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of

higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(a) *Federal labor standards provisions.* Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40

U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in “approved apprenticeship and training programs,” as described in paragraph (d) of this section.

(b) *Approved apprenticeship and trainee programs.* Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(c) *Compliance with Executive Order 11246.* Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended

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by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) *General.* (1) Recipients and covered contractor may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

b. *Training and employment.* The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) *Numerical goals for section 3 covered public and Indian housing programs.* Recipients of section 3 covered public and Indian housing assistance (as described in § 135.5) and their contractors and

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subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) *Numerical goals for other HUD programs*

covered by section 3. (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or sub-contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or sub-contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or sub-contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.*

(1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in § 135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§ 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the

operations of its contractors and sub-contractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in § 135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in § 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in § 135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist

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local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart

B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is

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located shall be given the highest priority;

(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) *Eligibility for preference.* A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in § 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) *Eligibility for employment.* Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments

for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses); (ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) *Eligibility for preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in § 135.5.

(c) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding

the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This

regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR

part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.40 Providing other economic opportunities.

(a) *General.* In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) *Other training and employment related opportunities.* Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in

management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) *Other business related economic opportunities.* (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including microenterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A *section 3 joint venture* means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging non-compliance with the regulations of this

part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in § 135.76(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or re-fused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in § 135.7, which includes PHA and IHA.

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under § 135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

- (b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.74 Section 3 compliance review procedures.

(a) *Compliance reviews by Assistant Secretary.* The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) *Form of compliance review.* A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) *Where compliance review reveals noncompliance with section 3 by recipient or contractor.* Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.

Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) *Conducting compliance review before the award of assistance.* Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) *Consideration of complaints during compliance review.* Complaints alleging noncompliance with section 3, as provided in § 135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

§ 135.76 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) *Where to file a complaint.* A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or

omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) *Contents of complaint—(1) Written complaints.* Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) *Amendment of complaint.* Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) *Resolution of complaint by recipient.*

(1) Within ten (10) days of timely filing of a complaint that contains complete

information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) *Informal resolution of complaint by Assistant Secretary*—(1) *Dismissal of complaint*. Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the com-

plaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) *Informal resolution*. Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) *Effective date of informal resolution*. The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) *Sanctions*. Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) *Investigation of complaint*. The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) *Intimidatory or retaliatory acts prohibited*. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of

§ 135.90

complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) *Judicial relief.* Nothing in this sub-part D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529-0043)

Subpart E—Reporting and Recordkeeping

§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section

3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

**APPENDIX TO
PART 135**

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1) Entering into "first source" hiring agreements with organizations representing Section 3 residents.

(2) Sponsoring a HUD-certified "Step-Up" employment and training program for section 3 residents.

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in § 135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2

persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a spe-

cific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

24 CFR Subtitle B, Ch. I (4-1-03 Edition)

(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph

(1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

—the section 3 covered contract to be awarded with sufficient specificity;

—the time within which quotations must be submitted; and

—the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	x=lesser
When the lowest responsive bid is less than \$100,000	10% of that bid or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000.
\$7 million or more	1 1/2% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* (i) For contracts and sub- contracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering

price and all other factors specified in the RFP.

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

- 146.1 Purpose of the Age Discrimination Act of 1975.
- 146.3 Purpose of HUD's age discrimination regulation.
- 146.5 Applicability of part.
- 146.7 Definitions.

Subpart B—Standards for Determining Age Discrimination

- 146.11 Scope of subpart.
- 146.13 Rules against age discrimination.

Subpart C—Duties of HUD Recipients

- 146.21 General responsibilities.
- 146.23 Notice of subrecipients.
- 146.25 Assurance of compliance and recipient assessment of age distinctions.
- 146.27 Information requirements.

Subpart D—Investigation, Settlement, and Enforcement Procedures

- 146.31 Compliance reviews.
- 146.33 Complaints.
- 146.35 Mediation.
- 146.37 Investigation.
- 146.39 Enforcement procedures.
- 146.41 Prohibition against intimidation or retaliation.

Appendix 10

Property Condition Assessment requirements

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 11</u>	QUALIFIED ALLOCATION PLAN (QAP)
<u>SUBCHAPTER D</u>	UNDERWRITING AND LOAN POLICY
RULE §11.306	Scope and Cost Review Guidelines

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should must be included.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that

the SCR adequately considers and all applicable federal, state, and local laws and regulations which are applicable and govern any work. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual and/or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

Source Note: The provisions of this §11.306 adopted to be effective December 29, 2019, 44 TexReg 7889

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**APPENDIX 11
MULTIFAMILY RELOCATION REQUIREMENTS, INCLUDING RELATED FORMS**

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Regulation

Per HUD, activities and projects assisted by CDBG-DR are subject to the Uniform Relocation Assistance (URA), a federal law which provides important protections and assistance for people affected by the acquisition, rehabilitation, or demolition of real property for federally funded projects.

The URA was enacted by Congress to ensure people whose real property is acquired, or who move as a direct result of projects receiving federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

Activities and projects assisted by CDBG-DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. Programs and projects must adhere to

- **49 CFR Part 24** is the government-wide regulation that implements the URA.
- **HUD Handbook 1378** provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects.
- Housing and Community Development (HCDD) Policies and Procedures.

CDBG-DR Waiver(s)

One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements. Activities and projects undertaken with CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-DR funds.

The relocation assistance requirements at Section 104(d)(2)(A) of the Housing and Community Development Act and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR Part 24, as modified by the notice for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under the federal register notice.

The HCDD's Residential Anti-displacement and Relocation Assistance Plan (RARAP) will be adhere to when direct or indirect permanent displacement of tenants occur. The following steps are required by subrecipients and developers to minimize the direct and indirect displacement of persons from their homes: Plan construction activities to allow tenants to remain in their units as long as possible, by rehabilitating empty units or buildings first; where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement; adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods; adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas; or target only those properties deemed essential to the need or success of the project.

Monitoring

If Relocation is triggered, periodic monitoring reviews will be conducted to inspect tenant files.

Record Keeping

If Relocation is triggered, relocation tenant files must be made available for periodic monitoring reviews. Tenant files and other related records must be maintained for a 3-years after construction completion.

Forms

All HUD approved forms and templates are provided by HCDD's URA section.

Exhibit 1

RELOCATION (URA) FOR MULTIFAMILY PROJECTS		
Stage	Project Name Address Houston, TX 770	Project Contact Information
	1	Assurance Letter
1	Relocation Plan	Submitted with Application. Refer to example online at HCDD.
1	Blank Notices	Submitted with Application. Refer to example online at HCDD.
1	Budget	Submitted with Application. Refer to example online at HCDD.
1	Rent Roll	Submitted with Application
1	Site Map	Submitted with Application
1	Notice to Real Property Owner/Seller voluntary acquisition/Right to withdrawal	If Applicable - Submitted with Application. Refer to example online at HCDD.
1	Deed - If property already owned	If Applicable - Submitted with Application
1	General Information Notice Residential TENANT Not Displaced (GIN)	Mailed to Tenant as soon as feasible. Submitted upon request from HCDD- Appendix 2, Handbook 1378. Refer to example online at HCDD.
1	General Information Notice Residential TENANT To Be Displaced (GIN)	Mailed to Tenant as soon as feasible. Submitted upon request from HCDD- Appendix 3, Handbook 1378. Refer to example online at HCDD.
1	Tenant Acknowledgement of GIN Notices	Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
2	Site Occupant Record-Residential. All Tenants	Used for Interviewing Tenants. Modified Income Certification form. Submitted to HCDD prior to move of tenant. Refer to example online at HCDD.
2	Income Verification	Submitted to HCDD prior to move of tenant.
2	Tenant Status Report w/ Rent Roll Tenants requiring relocation	Initial Tenant list as of City Council approval date (ION). Include Rent Roll dated as of City Council approval date. (per 1-4, T) Handbook 1378. Refer to example online at HCDD.
2	Notice of Non Displacement	If Applicable-Delivered to Tenant within 10 business days from City Council approval date. Refer to example online at HCDD.
2	Notice of Eligibility	If Applicable-Delivered to Tenant within 10 business days from City Council approval date. Refer to example online at HCDD.
2	Tenant Acknowledgement of Eligibility Determination Notices	Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
3	Temporary Relocation 90 Day Notice	Delivered to Tenant within 10 business days from City Council approval date, but not before eligibility determination. Refer to example online at HCDD.
3	Tenant Acknowledgement	Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
4	Temporary Relocation 30 Day Notice	30 Days Prior to move. Must include rent amount, apt. #, and move date. Refer to example online at HCDD.

4	Tenant Acknowledgement	Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
4	Transfer 30 Day Notice	30 Days Prior to move. Must include rent amount, apt. #, and moving date. Refer to example online at HCDD.
4	Tenant Acknowledgement	Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
1-6	Move In Notices w/ updated Rent Roll	If Applicable. Refer to example online at HCDD.
1-6	Skip/Abandonment Notice/Breach of Lease	If Applicable. Must submit tenant's Final Account Statement. Refer to example online at HCDD.
1-6	Eviction/Court Orders	If Applicable. Must submit tenant's Final Account Statement and copy of Court Order.
1-6	Tenant Status Report w/ Rent Roll	Monthly report beginning at ION. Submitted by the 10th of each month.
6	Relocation Compliance Review	Prior to Retainage being paid. Reviews usually begins after first moves.
6	Evidence Relocation Exp. Paid	Prior to Retainage being paid. Must include: Moving Contract, Detailed Invoice, and Check (front and back).

Use this checklist to assemble and evaluate information pertaining to temporary relocation of tenants in rehabilitation projects only (Uniform Relocation Act and related regulations)

**EXAMPLE/SAMPLE
RELOCATION PLAN**

1. Cover Sheet must include:
 - Name of Project
 - Address of Project
 - Name of Owner/Entity
2. Table of Contents:
 - A. Property Summary
 1. Current Demographics
 2. Displaced Persons
 - B. Relocation Destination
 - C. Temporary Relocation Benefits
 1. Tenant Notices
 2. Moving Assistance
 3. Utility Transfers
 - D. Tenant Relocation Benefits
 1. Tenant Notices
 2. Covered Costs
 3. Advisory Services
 - E. Relocation Services
 1. Transportation
 2. Communication
 3. Delinquent Utility Bills
 - F. Relocation Recordkeeping and Notices
 1. Relocation Plan Assurance Letter (sign and dated)
 2. Site Map
 3. Potential Transition of Tenants/Tenant Transition Schedule
 4. Tenant Packet (Include Blank Notices with submission of Plan)
 - General Information Notice
 - Non Displacement Notice and/or
 - Notice of Eligibility
 - Temporary Relocation 90 Day Notice
 - Temporary Relocation 30 Day Notice
 - Transfer Notice 30 Day Notice
5. Construction Schedule

Project Relocation Specialist Contact Information

Owner Contact Information

A. Project Summary

1. Current Demographics

The property is located in the section of the City of Houston, Texas, specifically at the intersection of () streets. Harris County Key Map page (). The project contains a total of acres or approximately () square feet. The shape of the property is generally rectangular with approximately () feet of frontage on the () line of () and () feet on the () line of (). Accessibility to the property is via () Road from the () to () or (). The property is located within the City Limits of Houston and has public water and electric and natural respectively to the site. Telephone service is provided by (). The property is/is not deed restricted as to use and the City of Houston does not subscribe to zoning ordinances. The property was constructed in (); the project has a total of () buildings, () residential and () ancillary (office/community building and laundry). The residential buildings are a mixture of () stories and/or (). There are a total of () units. There are () floor plans which vary from one another by bedroom count and number of bathrooms. This Relocation Plan has been developed due to renovations of the property which is scheduled to start ().

(INSERT CURRENT UNIT MIX TABLE HERE)

Parking is (covered/not covered), the parking and drive are () paved. There are a total of () parking spaces, there are () spaces designated 504 accessible. Project amenities include: () currently () % are/are not restricted by ().

2. Displace Persons

The renovation of the property is expected to take approximately () months and it is "NOT" anticipated that there will be any "displaced persons" who by definition are persons that must move from the property permanently. If it is determined that there are, the plan will be amended to address the special requirements particular to the tenants. These tenants would be given the Notice of Eligibility for Relocation Assistance (see example in Section F) which would inform them of their rights under URA.

B. RELOCATION DESTINATION

There have not been any new leases executed in the last () months in order to have units available to move tenants into. The Relocation Specialist will track the vacant units each month during renovation and submit tracking documentation to HCDD. A tenant transition plan will be

mapped out and submitted to HCDD. This plan will show which tenants will be moved and the new rehabbed units they will be moved to. (See Section F, 3)

If there are no available units onsite the tenant will be provided temporary housing in the development listed below. (Property name) will assure that all temporary housing provided is decent, safe, and sanitary on a non discriminating basis for families or individuals who may be moved offsite.

If it becomes necessary to house tenants in temporary units other than a subsidized housing complex, attempts will be made to find single family units. Rents paid by (your property name) will represent the difference in the tenants current TTP and any additional rent that the tenant must pay. In addition, all relocations off site will be within a five mile radius unless it is in response to a request to a "reasonable accommodation".

(INSERT TABLE WHICH LISTS "DEVELOPMENTS AVAILABLE FOR RELOCATION HERE-include name and address of property, contact information)

C. TEMPORARY RELOCATION OF TENANTS

1. Tenant Notice

In preparation for the relocations, () will conduct group meetings to notify the tenants of the plans for the complex. In addition to these group meetings, the tenants will also receive written notices of the overall renovation plans and notice of the plans for their relocation. Tenants will be notified that they should not move on their own or contact a mover because they would risk being held responsible for these cost and/or forfeit relocation benefits.

Each tenant will be given a packet of information that is included in Section F of this plan and it includes items mandated via URA. Every attempt will be made to keep the tenants informed and to answer any questions that they may have.

2. Moving Assistance

Moving services will be made available to the tenants. Each resident will be given the option of receiving packing assistance. If a resident prefers to pack their own personal possessions, they will be provided packing supplies. All residents will be provided written notices of their scheduled moving date and time in their 30 day notice. (See Section F, 4)

3. Utility Transfers

A letter will be sent to the utility providers of the property. It will explain the plans for the property renovation and for them to anticipate numerous requests for transfers within a short period of time. The tenant will be responsible for scheduling the transfer of their utilities and are expected to notify the relocation specialist of the date and time the transfer is scheduled. If there are any problems with any transfers the property will have the utilities turned on in the

properties name and the tenant will be given 10 days to resolve the issues with the utility company.

D. TENANT RELOCATION BENEFITS

1. Tenant Notice

Tenants will be given notice of what charges and deposits will be covered in the relocation and they will have to sign it and indicate that they understand that there are no other costs that will be covered.

2. Covered Cost

(Your property name) will pay for packing and moving costs that are scheduled by the relocation specialist. (Your property name) will also cover the cost of deposits or transfer fees for the utilities, any increase in rent of the off site temporary housing, if applicable; and telephone/cable at both the temporary unit and the return to the newly renovated unit. These costs will be paid directly to the providing agency and attached to the tenants unit and head of household. These costs will not be paid on behalf of anyone that moves prior to the coordination efforts of the Relocation Specialist or due to Eviction for Cause.

3. Advisory Services

(Your property name) will contact and interview each person who is affected by the project to discuss his/her needs, preferences, concerns, and to answer questions. (Your property name) will use the Site Occupant Record (Exhibit 8 of HCDD Relocation Policy) to record interview of each household. (Your property name) will also provide information about the project and any benefits the tenant may be eligible for; as applicable to the tenants' circumstances (49CFR 24.205(c)).

E. RELOCATION SERVICES

1. Transportation

Relocation of the tenants will be done in phases; the Relocation Specialist will be able to provide the necessary supportive services that may be required. If off site housing is used and there is a need, transportation will be provided to the tenant via taxi companies to tour the proposed unit.

2. Communication

Each tenant will be given written information outlining the process and will be given group and individual access to the Relocation Specialist. The tenants that may require special assistance due to a disability will be identified and will be provided assistance in a non-discriminatory manner.

3. Delinquent Utility Bills

If the tenants do not have the financial resources to pay delinquent utility bills that would hinder services being transferred to their temporary unit, the property will have the services temporarily placed under the property name. The tenant would have 10 business days after move-in, to resolve the issue with the respective utility company.

F. RELOCATION RECORDKEEPING AND NOTICES

NOTE: Blank Notices submitted in this section.

RELOCATION PLAN ASSURANCES

I certify that this relocation plan contains accurate information and has been prepared in accordance with 49 CFR Part 24, Uniform Relocation Assistance (URA) and Real Property Acquisition Final Rule and Notice. I further assure that:

1. Relocation staff knows and will follow URA requirements;
2. Relocation staff who will implement this plan are familiar with its contents and the requirements;
3. Sufficient funds have been appropriated, reserved, set aside or otherwise committed to cover the anticipated relocation cost;
4. Families and individuals will have full opportunity to occupy comparable, decent, safe, and sanitary housing;
5. Relocation payments will be made promptly by the borrower and to the full extent for which tenants are eligible;
6. The project activities have been planned in a manner that will minimize hardships to tenants;
7. All tenants will be given a reasonable period of time to move and no one will be required to move unless a comparable replacement unit is available or provided for;
8. Relocation assistance and advisory services will be provided in accordance with the needs of the tenant.

Print Name

Title

Signature

Date

SITE MAP PAGE

RELOCATION PLAN ASSURANCES

CDBG/HOME Multifamily Projects

I certify that this relocation plan contains accurate information and has been prepared in accordance with 49 CFR Part 24, Uniform Relocation Assistance (URA) and Real Property Acquisition Final Rule and Notice. I further assure that:

1. Relocation staff knows and will follow URA requirements; Re
2. Relocation staff who will implement this plan are familiar with its contents and the requirements; Su
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4. Families and individuals will have full opportunity to occupy comparable, decent, safe, and sanitary housing; Re
5. Relocation payments will be made promptly by the borrower and to the full extent for which tenants are eligible; Th
6. The project activities have been planned in a manner that will minimize hardships to tenants; All
7. Tenants will be given a reasonable period of time to move and no one will be required to move unless a comparable replacement unit is available or provided for; Re
8. Relocation assistance and advisory services will be provided in accordance with the needs of the tenant. Re

Print Name

Title

Signature

Exhibit 3

Date

Exhibit 4

Relocation Budget for (Project Name), (Date)

TYPE OF UNIT	Total Number of Units	PACKING & MOVING Cost per Unit	URA Cost per Unit*	Sub-total cost packing & moving per type of unit	Subtotal URA Cost
			0.00	0.00	0.00
			0.00	0.00	0.00
			0.00	0.00	0.00
			0.00	0.00	0.00
TOTAL UNITS	0				
TOTAL COST PACKING & MOVING					0.00
TOTAL URA COST					0.00
MISCELLANEOUS COST 10%**					
TOTAL RELOCATION BUDGET					0.00

CHECK YOUR MATH

* URA Cost include transfer fees, non refundable deposits and increased rent for off-site temporary units. Refundable deposits are no longer an eligible cost under the URA.

**Miscellaneous Cost include mail cost and any unforeseen cost of relocation.

Exhibit 5

NOTICE TO REAL PROPERTY OWNER/SELLER

Date: _____

Owner(s)/Seller(s): _____

Buyers(s): _____

Address of Property Under Consideration: _____

Dear Owner(s)/Seller(s):

Property believed to be owned by you is being considered for purchase, as referenced above. Because Federal funds may be used in the purchase of your property, we are required to disclose the following information by the U. S. Department of Housing and Urban Development (HUD) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended (URA), Section 24.101 (b)(2):

1. The proposed sale is voluntary. In the event negotiations fail to result in an agreement, the property will not be acquired by either voluntary purchase or eminent domain.
2. The fair market value of the property is estimated to be \$_____. However, since this transaction is voluntary, current or future negotiations may result in a different price that may be the same, higher or lower than this amount.

An owner-occupant who sells his or her property under these terms does not qualify as a displaced person for relocation payments. Additionally, any person who occupies the property for the purpose of obtaining assistance under the URA does not qualify as a displaced person. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

In accordance with HUD requirements, if the information proved above is disclosed after an option to purchase or contract has been executed between the Buyer(s) and the seller(s), the Seller(s) must be provided the opportunity to withdraw from the agreement.

Any title deficiencies, liens, or encumbrances on the property must be cleared prior to any closing. Generally, this is a cost that is borne by the Seller(s) of the property; however payment of these costs may be negotiated between the Buyer(s) and Seller(s). **No federal funds can be used to pay these costs.**

Should you have any questions, please feel free to contact: _____
(Name of Contact Person)

_____ at _____
(Name of City/County/State/Organization/Lender) (Telephone Number)

Receipt acknowledged this _____ day of _____, 2010

Seller(s)

(Seller(s))

NOTICE TO REAL PROPERTY OWNER/SELLER

Date: _____

Owner(s)/Seller(s): _____

Buyers(s): _____

Address of Property Under Consideration: _____

Dear Owner(s)/Seller(s):

Property owned by you has been contracted for purchase, as referenced above. Because Federal funds may be used in the purchase of your property, we are required to disclose the following information by the U. S. Department of Housing and Urban Development (HUD) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended (URA), Section 24.101 (b)(2):

1. The proposed sale is voluntary. In the event negotiations fail to result in an agreement, the property will not be acquired by either voluntary purchase or eminent domain.
2. The fair market value of the property is estimated to be \$ _____. However, since this transaction is voluntary, current or future negotiations may result in a different price that may be the same, higher or lower than this amount.

An owner-occupant who sells his or her property under these terms does not qualify as a displaced person for relocation payments. Additionally, any person who occupies the property for the purpose of obtaining assistance under the URA does not qualify as a displaced person. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

In accordance with HUD requirements, if the information proved above is disclosed after an option to purchase or contract has been executed between the Buyer(s) and the seller(s), the Seller(s) must be provided the opportunity to withdraw from the agreement.

Any title deficiencies, liens, or encumbrances on the property must be cleared prior to any closing. Generally, this is a cost that is borne by the Seller(s) of the property; however payment of these costs may be negotiated between the Buyer(s) and Seller(s). **No federal funds can be used to pay these costs.**

Should you have any questions, please feel free to contact: _____
(Name of Contact Person)

_____ at _____
(Name of City/County/State/Organization/Lender) (Telephone Number)

Receipt acknowledged this _____ day of _____, 2010

Seller(s) (Seller(s))

MOVE-IN NOTICE
(GUIDEFORM NOTICE TO PROSPECTIVE TENANT)

Grantee or Agency Letterhead

(date)

Dear _____,

On (date), (property owner) submitted an application to the City of Houston, Housing and Community Development Department for financial assistance under a program funded by the Department of Housing and Urban Development (HUD). The proposed project involves (acquisition) (rehabilitation) (demolition) and/or (conversion) of the property located at (address).

Because Federal funds are planned for use in this project, the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970, as amended (URA) (and/or section 104(d) of the Housing and Community Development Act of 1974, as amended) may apply to persons in occupancy at the time the application was submitted for HUD funding. However, if you choose to occupy this property subsequent to the application for federal financial assistance, as a new tenant you will not be eligible for relocation payments or assistance under the URA (and/or section 104(d)).

This notice is to inform you of the following information before you enter into any lease agreement and/or occupy the property located at the above address:

- You may be displaced by the project.
- You may be required to relocate temporarily.
- You may be subject to rent increase.
- You will not be entitled to any payments or assistance provided under the URA (and/or section 104(d)). If you have to move or your rent is increased as a result of the above project, you will not be reimbursed for any such rent increase or for any costs or expenses you may incur in connection with a move as a result of the projects.

Please read this notification carefully prior to signing a rental agreement and moving into the project. If you should have any questions about this notice, please contact (Grantee or Agency) at (address and telephone number). Once you have read and understood this notice, please sign the statement below if you still desire to lease the unit.

Sincerely,

(Name and title)

Exhibit 7

I have read the above information and understand the conditions under which I am moving into the project.

Print Name of Tenant(s)

Signature(s)

Address and Unit Number

Date

Note:

This is a guldeform. It should be revised to reflect the project circumstances.

Site Occupant Record - Residential

LOCALITY/AGENCY _____ Date of initial interview: _____ Interviewer: _____ NAME OF OCCUPANT _____ ADDRESS _____ TELEPHONE NUMBER _____ CENSUS TRACT _____ IS THIS ADDRESS LOCATED IN A HUD DESIGNATED RENEWAL COMMUNITY OR EMPOWERMENT ZONE? <input type="checkbox"/> YES <input type="checkbox"/> NO DATE OCCUPANT FIRST OCCUPIED THIS DWELLING _____	Project Name: _____ Project #: _____ Relocation Case #: _____ Acquisition Parcel #: _____ CHECK: <input type="checkbox"/> FAMILY <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> OWNER <input type="checkbox"/> TENANT DATE OF GENERAL INFORMATION NOTICE _____ EFFECTIVE DATE OF NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE _____ DATE PRIVACY ACT STATEMENT EXECUTED _____ DATE PRIVACY ACT STATEMENT AND SIGNED PRIVACY ACT STATEMENT (INCLUDE COPY OF NOTICES AND SIGNED PRIVACY ACT STATEMENT IN CASE FILE) _____
RACIAL/ETHNIC CLASSIFICATION (CHECK ALL THAT APPLY) <input type="checkbox"/> AMERICAN INDIAN OR ALASKAN NATIVE <input type="checkbox"/> ASIAN <input type="checkbox"/> BLACK OR AFRICAN AMERICAN <input type="checkbox"/> HISPANIC OR LATINO <input type="checkbox"/> NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER <input type="checkbox"/> WHITE <input type="checkbox"/> AMERICAN INDIAN OR ALASKAN NATIVE AND WHITE <input type="checkbox"/> ASIAN AND WHITE <input type="checkbox"/> BLACK OR AFRICAN AMERICAN AND WHITE <input type="checkbox"/> AMERICAN INDIAN OR ALASKAN NATIVE AND BLACK OR AFRICAN AMERICAN <input type="checkbox"/> OTHER MULTI-RACIAL	HOUSING COSTS AND CHARACTERISTICS OF DISPLACEMENT DWELLING TENANT: MONTHLY CONTRACT RENT \$ _____ AVERAGE MONTHLY UTILITY COSTS \$ _____ MONTHLY HOUSING COSTS \$ _____ OWNER: MONTHLY MORTGAGE PAYMENT (P&I) \$ _____ AVERAGE MONTHLY UTILITY COSTS \$ _____ REAL PROPERTY TAXES \$ _____ MONTHLY HOUSING COSTS \$ _____ NO. OF ROOMS _____ NO. OF BEDROOMS _____ UNIT IS: <input type="checkbox"/> HOUSEKEEPING <input type="checkbox"/> NONHOUSEKEEPING

HOUSING REFERRALS		Action on Referral (If refused, indicate why. Also indicate whether unit is representative comparable used as basis for prmt limit.)			
Date	Address (Include Apt No.)	Type of Unit		Unit Avail Date	Low Income Or Minority Area?
		Census Track	Size of Unit		
		Rent	# of Rms	Mo Rent + Est Avg Mo Utility Costs/Sales Price	Unit Inspd

REPLACEMENT DWELLING UNIT ADDRESS _____ CENSUS TRACT _____ YES NO

DATE OF MOVE _____ IS THIS ADDRESS LOCATED IN A HUD DESIGNATED RENEWAL COMMUNITY OR EMPOWERMENT ZONE? YES NO

MONTHLY HOUSING COST (MHC) _____

RENTAL _____ PURCHASE _____

MONTHLY RENT \$ _____ MORTGAGE PAYMENT (P&I) \$ _____

EST. AVERAGE REAL ESTATE TAXES \$ _____

MONTHLY UTILITY COSTS \$ _____ EST. UTILITY COSTS \$ _____

TOTAL MHC \$ _____ TOTAL MHC \$ _____ SALES PRICE \$ _____

RELOCATION PAYMENT(S) MOV. EXP. REP TYPE ACTUAL RENTAL FIXED DOWNPMT 180-DAY HO AMOUNT \$ _____

DATE CLAIM FILED _____ DATE CLAIM PAID _____ (Include copy of Claim Forms in Case File)

APPEAL FILED: YES NO

IF YES, INDICATE TYPE: PAYMENT(S) HOUSING OTHER (Include copy of Appeal in Case File)

TEMPORARY HOUSING DATE _____ REASON _____

ADDRESS _____ RENTAL \$ _____

DATE OF MOVE TO PERMANENT DWELLING _____

OUT-OF-POCKET EXPENSES PAID: \$ _____

MOVING EXPENSES \$ _____

INCREASED HOUSING COSTS \$ _____

IS UNIT IN AREA OF LOW-INCOME OR MINORITY CONCENTRATION? YES NO

IS UNIT SUBSIDIZED? YES NO

(Identify) _____

INSTRUCTION FOR FILLING OUT AND UPDATING THE TENANT STATUS REPORT

1. R
Run a Rent Roll on the date City Council approves project contract. This is your Initiation of Negotiations (ION) date. Import information for columns, Move In Date, Resident Name, Unit #, Size/Type. This is the list of residents you must track during the renovation period.
2. Update spreadsheet information monthly and submit to HCDD by the 10th of each month with all documentation pertaining to tenants for that month. Such as, copies of Notices addressed to tenants w/ receipts, move out checklists, final account statements, evictions (court order), transfers, temporary relocations, final moves w/ leases, etc.
3. If you need to add columns or rows to include any of these headings or to add new tenant names to a vacant unit please do so.
4. Please do not remove any previous monthly information. If column does not pertain to your project please type N/A.
5. Please note if tenant is a: Move In, Skip, Lease Ended-gave notice, Lease Ended-no reason given, or Eviction, in the Reason for Move Out (Comment) column.

Please contact your Relationship Manager at 713-868-8300 or Elizabeth Spinnenweber at 713-868-8426 if you have any questions. Thank you.

GUIDEFORM GENERAL INFORMATION NOTICE
RESIDENTIAL TENANT NOT DISPLACED

Grantee or Agency Letterhead

(date)

Dear _____:

_____, (City, County, State, Public Housing Authority (PHA), other) _____, is interested in rehabilitating the property you currently occupy at _____ (address) _____ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program.

The purpose of this notice is to inform you that you will not be displaced in connection with the proposed project.

If the project application is approved and federal financial assistance provided, you may be required to move temporarily so that the rehabilitation can be completed. If you must move temporarily, suitable housing will be made available to you and you will be reimbursed for all reasonable out of pocket expenses, including moving costs and any increase in housing costs. You will need to continue to pay your rent and comply with all other lease terms and conditions.

Upon completion of the rehabilitation, you will be able to lease and occupy your present apartment or another suitable, decent, safe and sanitary apartment in the same building/complex under reasonable terms and conditions. *

If federal financial assistance is provided for the proposed project, you will be protected by a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). One of the URA protections for persons temporarily relocated is that such relocations shall not extend beyond one year. If the temporary relocation lasts more than one year, you will be contacted and offered all permanent relocation assistance as a displaced person under the URA. This assistance would be in addition to any assistance you may receive in connection with temporary relocation and will not be reduced by the amount of any temporary relocation assistance previously provided. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Exhibit 10

We urge you not to move at this time. If you choose to move, you will not be provided relocation assistance.

Please remember:

- This is not a notice to vacate the premises.
- This is not a notice of relocation eligibility.

You will be contacted soon so that we can provide you with more information about the proposed project. If the project is approved, we will make every effort to accommodate your needs. In the meantime, if you have any questions about our plans, please contact:

(name) _____, (title) _____,
(address) _____, (phone) _____.

Sincerely,

(name and title) _____

Enclosure

NOTES.

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.

* *Based on the applicable HUD program regulations, if "reasonable terms and conditions," are defined, one of the following statements or other language may also be required in this Notice:*

- a. *Under HOME at 24 CFR 92.353(c)(2)(C)(1): "Your new lease will be for a term of not less than one year at a monthly rent will remain the same or, if increased, your new monthly rent and estimated average utility costs will not exceed: 1) If you are low income, the total tenant payment as defined by HUD (under 24 CFR 5.628), or (2) 30% of the monthly gross household income, if you are not low income."*
- b. *Under CDBG at 24 CFR 570.606(b)(2)(D)(1): "Your monthly rent will remain the same or, if increased, your new rent and estimated average utility costs will not exceed 30% of the household's average monthly gross income."*
- c. *Under Section 221 Mortgage Insurance Programs under 24 CFR 221.795(i): "Your monthly rent and estimated average utility costs will not exceed the amount approved by HUD."*

GUIDEFORM GENERAL INFORMATION NOTICE
RESIDENTIAL TENANT TO BE DISPLACED

Grantee or Agency Letterhead

(date)

Dear _____:

_____ (City, County, State, Public Housing Authority (PHA), other) _____, is interested in _____ (acquiring, rehabilitating, demolishing) _____ the property you currently occupy at _____ (address) _____ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program.

The purpose of this notice is to inform you that you may be displaced as a result of the proposed project. This notice also serves to inform you of your potential rights as a displaced person under a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). You may be eligible for relocation assistance and payments under the URA, if the proposed project receives HUD funding and if you are displaced as a result of acquisition, rehabilitation or demolition for the project.

- This is not a notice to vacate the premises.
- This is not a notice of relocation eligibility.

If you are determined to be eligible for relocation assistance in the future, you may be eligible for: 1) Relocation advisory services including help to you find another place to live; 2) At least 90 days advance written notice of the date you will be required to move; 3) Payment for your moving expenses; and 4) Replacement housing payments to enable you to rent, or if you prefer to purchase, a comparable replacement home. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered. The enclosed HUD brochure, "Relocation Assistance To Tenants Displaced From Their Homes" provides an explanation of this assistance and other helpful information.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Please be advised that you should continue to pay your rent and meet any other obligations as specified in your lease agreement. Failure to do so may be cause for eviction. If you choose to move or if you are evicted prior to receiving a formal notice of

Exhibit 11

relocation eligibility you will not be eligible to receive relocation assistance. It is important for you to contact us before making any moving plans.

Again, this is not a notice to vacate the premises and does not establish your eligibility for relocation payments or assistance at this time. If you are determined to be displaced and are required to vacate the premises in the future, you will be informed in writing. In the event the proposed project does not proceed or if you are determined not to be displaced, you will also be notified in writing.

If you have any questions about this notice or the proposed project, please contact
(name) _____, (title) _____,
(address) _____, (phone) _____.

Sincerely,

(name and title) _____

Enclosure

NOTES

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 1 of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.
3. Optional paragraphs for displaced residents of public housing projects (may be modified based on the PHA's resident return policy):

"Even though you will be provided all of the assistance the URA requires for a permanent move, the Authority believes that every resident displaced from the site should have the right to reapply for occupancy once this project is complete. For this reason, after project completion, every resident who receives assistance as a "displaced person" will be contacted and offered an opportunity to reapply for occupancy in the newly-revitalized community. Furthermore, because you will be a former occupant who was "displaced" from the site, you will also receive a priority preference to return.

In the event the number of those who request to return and qualify for housing exceeds the number of units available, rating and ranking criteria will be used to identify those who will be offered a unit at the site until all available units are filled. If you do return, the Authority may help defray the costs of the return move. If you have Replacement Housing Payments not yet spent or obligated, you may be asked to forfeit these payments as a condition for returning to public housing, since this assistance will no longer be necessary to meet your housing needs. Such assistance, if not forfeited, must be considered as income and may affect your eligibility and rent."

APPENDIX 11

GUIDEFORM NOTICE OF NONDISPLACEMENT
TO RESIDENTIAL TENANT
Grantee or Agency Letterhead

(date)

Dear _____:
On _____ (date), the _____ (City, County, State, Public Housing Authority (PHA), other), notified you of proposed plans to rehabilitate the property you currently occupy at (address) _____ for a project which could receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program. On _____ (date), the project was approved and will receive federal funding. Repairs will begin soon.

• This is a notice of nondisplacement. You will not be required to move permanently as result of the rehabilitation.

This notice guarantees you the following:

1. Upon completion of the rehabilitation, you will be able to lease and occupy your present apartment or another suitable, decent, safe and sanitary apartment in the same building/complex under reasonable terms and conditions. *
2. If you must move temporarily so that the rehabilitation can be completed, you will be reimbursed for all of your extra expenses, including the cost of moving to and from temporary housing and any increased interim housing costs. The temporary unit will be decent, safe and sanitary, and all other conditions of the temporary move will be reasonable.

Since you will have the opportunity to occupy a newly rehabilitated apartment, I urge you not to move. (If you do elect to move for your own reasons, you will not receive any relocation assistance.) We will make every effort to accommodate your needs. Because federal funding is involved in this project, you are protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Of course, you must continue to comply with the terms and conditions of your lease.

If you have any questions, please contact (name) _____, at (phone) _____, (address) _____. This letter is important to you and should be retained.

Sincerely,

(name and title) _____

App. 4-1 [10/06] 1378 CHG-6 Appendix 4

NOTES.

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.

** Based on the applicable HUD program regulations, if "reasonable terms and conditions," are defined, one of the following statements or other language may also be required in this Notice:*

- a. *Under HOME at 24 CFR 92.353(c)(2)(C)(1): "Your new lease will be for a term of not less than one year at a monthly rent will remain the same or, if increased, your new monthly rent and estimated average utility costs will not exceed: 1) if you are low income, the total tenant payment as defined by HUD (under 24 CFR 5.628), or (2) 30% of the monthly gross household income, if you are not low income."*
- b. *Under CDBG at 24 CFR 570.606(b)(2)(D)(1): "Your monthly rent will remain the same or, if increased, your new rent and estimated average utility costs will not exceed 30% of the household's average monthly gross income."*
- c. *Under Section 221 Mortgage Insurance Programs at 24 CFR 221.795(i): "Your monthly rent and estimated average utility costs will not exceed the amount approved by HUD."*

GUIDEFORM NOTICE OF ELIGIBILITY FOR
URA RELOCATION ASSISTANCE
RESIDENTIAL TENANT

Grantee or Agency Letterhead

(date)

Dear _____:

On _____ (date), the _____ (City, County, State, Public Housing Authority (PHA), other), notified you of proposed plans to _____ (acquire, rehabilitate, or demolish) the property you currently occupy at _____ (address) for a project which could receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program. On _____ (date), the project was approved and will receive federal funding.

It has been determined that you will be displaced by the project. Since you are being displaced in connection with this federally funded project, you will be eligible for relocation assistance and payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

- This is your Notice of Eligibility for relocation assistance
- The effective date of your eligibility is _____. (Insert date of Initiation of Negotiations, see 49 CFR 24.1(a)(15) or applicable HUD program regulations)

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

To carry out the project, it will be necessary for you to move. However, you do not need to move now. You will be provided written notice of the date by which you will be required to move. This date will be no less than 90 days from the date comparable replacement housing has been made available to you.

Enclosed is a brochure entitled, "Relocation Assistance to Tenants Displaced From Their Homes." Please read the brochure carefully. It explains your rights and provides additional information on eligibility for relocation payments and what you must do in order to receive these payments.

The relocation assistance to which you are entitled includes:

Relocation Advisory Services. Including counseling and other assistance to help you find another home and prepare to move.

Payment for Moving Expenses. You may choose: (1) a payment for your actual reasonable moving and related expenses, or (2) a fixed moving payment in the amount of \$_____ based on the URA Fixed Residential Moving Cost Schedule, or (3) a combination of both.

Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors including: (1) the monthly rent and cost of utility services for a comparable replacement dwelling, (2) the monthly rent and cost of utility services for your present home, and (3) for low-income persons, 30 percent of your average monthly gross household income. This payment is calculated on the difference in the old and new housing costs for a one-month period and multiplied by 42.

Listed below are three comparable replacement dwellings that you may wish to consider for your replacement home. If you would like, we can arrange transportation for you to inspect these and other replacement dwellings.

	Address	Rent & Utility Costs	Contact Info
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

We believe that the dwelling located at _____ (address) is the most representative of your present home. The monthly rent and the estimated average monthly cost of utilities for this dwelling is \$_____ and it will be used to calculate your maximum replacement housing payment. Please contact us immediately if you believe this dwelling is not comparable to your current home. We can explain our basis for selecting this dwelling as most representative of your current home and discuss your concerns.

Based on the information you have provided about your income and the rent and utilities you now pay, you may be eligible for a maximum replacement housing payment of approximately \$_____ (42 x \$_____), if you rent the dwelling identified above as the most comparable to your current home or rent another dwelling of equal cost.

Replacement housing payments are not adjusted to reflect future rent increases or changes in income. This is the maximum amount that you would be eligible to receive. If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than the comparable dwelling, your replacement housing payment will be based on the actual cost of the dwelling. We will not base your payment on any dwelling that is not a comparable replacement home. All replacement housing payments must be paid in installments. Your payment will be paid in # installments.

Should you choose to purchase (rather than rent) a decent, safe and sanitary replacement home, you would be eligible for a downpayment assistance payment which is equal to your maximum replacement housing payment, \$ *. Let us know if you are interested in purchasing a replacement home and we will help you locate such housing.

Please note that all replacement housing must be inspected in order to ensure it is decent, safe and sanitary before any replacement housing payments are made.

If you have any questions about this letter and your eligibility for relocation assistance and payments, please contact (*name*), (*title*) at (*phone*), (*address*) before you make any moving plans. He/she will assist you with your move to a new home and help ensure that you preserve your eligibility for all relocation payments to which you may be entitled.

Remember, do not move or commit to the purchase or lease of a replacement home before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

 (*name & title*)

Enclosure/s

NOTES.

* At the agency's discretion, a downpayment assistance payment that is less than \$5,250 may be increased to any amount not to exceed \$5,250. (See 49 CFR 24.402(c)(1))

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.
3. Optional paragraphs for displaced residents of public housing projects (may be modified based on the PHA's resident return policy):

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"Even though you will be provided all of the assistance the URA requires for a permanent move, the Authority believes that every resident displaced from the site should have the right to reapply for occupancy once this project is complete. For this reason, after project completion, every resident who receives assistance as a "displaced person" will be contacted and offered an opportunity to reapply for occupancy in the newly-revitalized community. Furthermore, because you will be a former occupant who was "displaced" from the site, you will also receive a priority preference to return.

In the event the number of those who request to return and qualify for housing exceeds the number of units available, rating and ranking criteria will be used to identify those who will be offered a unit at the site until all available units are filled. If you do return, the Authority may help defray the costs of the return move. If you have Replacement Housing Payments not yet spent or obligated, you may be asked to forfeit these payments as a condition for returning to public housing, since this assistance will no longer be necessary to meet your housing needs. Such assistance, if not forfeited, must be considered as income and may affect your eligibility and rent."

Exhibit 14

Temporary Relocation 90 DAY NOTICE Guide-form

Property Name
Property Address

Date

Dear (resident),

On (GIN date), (property name) notified you of proposed plans to rehabilitate the property you currently occupy at (address). The project was approved and repairs/rehab will begin 90 days from this notice. We hope you are pleased and excited about the improvements that we will be making to the property to improve safety and attractiveness.

This is your notice that construction will start in 90 days. Do NOT move now. If you choose to move on your own, you will not be provided relocation assistance.

On (date), (property name) will begin moving tenants to their temporary/permanent units if necessary. During this 90 day period (contact name, phone number) will be available to provide assistance and answer any questions you may have. **(Describe assistance provided here)**

Your temporary/permanent address will be:

Please transfer your utilities over to your temporary/permanent location on this date: _____. We will help you to move to the new unit at a date to be mutually satisfactory.

Before moving you the (Property name) must (re)certify your income and lease. Please call (contact name, phone number) or stop by the office to schedule an appointment to meet. Please bring these documents with you to this meeting. (List docs needed) At this time we will give you your new keys and sign your replacement lease.

We will remind you again about this information and let you know the exact date of your move in a (Temporary Relocation/Transfer) 30 Day Notice. **Please do not move now.**

If you have any questions about this 90 day notice or the relocation process, please call (contact name, phone number) or come to the leasing office. We appreciate your patience during construction. Thank you.

Sincerely,

Date Delivered:
Delivered By:

APPENDIX 11

Exhibit 14

(and/or)
Resident Signature:

NOTE:

This notice may be modified to reflect your projects' circumstances and may be combined with the Non Displacement Notice and/or Notice of Eligibility. If you choose to do this; Please include all information from this notice.

Exhibit 15

Temporary Relocation/Transfer 30 Day Notice

LETTERHEAD

30 DAY NOTICE TO MOVE

DATE

Dear (resident name and unit #)

By letter dated (date), (property name) notified you of the plans to rehabilitate (property name). And by letter dated (date) you received your Temporary Relocation 90 day notice of the upcoming move.

Your (new/temporary) unit is ready and located at (property address), apartment # (). In order to prepare for your move boxes will be delivered on (date). Your new rent will be \$_____.

Since your unit is ready, your move has been scheduled for (date after 30 days). Please insure that all packing has been completed, and your utilities have been transferred. Please feel free to contact the Relocation Specialist (name) at (#) to sign your paperwork and obtain your keys.

Once again thank you for your cooperation.

(name)

(title)

Resident Signature

Date Received

Exhibit 16

HUD Handbook 1378 - Chapter 6 - Recordkeeping and Reports

Found at website www.hud.gov/relocation or request copy from
Housing and Community Development Department.

NOTICE TO VACATE FOR BREACH OF LEASE
Guide-form

_____ (Date)

(Name of all residents)

Re: Notice to vacate for breach of lease

(Street address and swelling unit number, if applicable)

TAA Lease Contract dated _____

(City, State, Zip)

between residents named above and _____

(owner)

Dear Resident (s):

You have violated your lease contract as noted below:

Lease Paragraph or Rule Number: _____

Name of Resident, occupant or guest in violation (if known): _____

Nature of Violation (specific facts): _____

On (date) you received a General Information Notice informing you of the planned renovations and telling you that in order to be eligible for relocation assistance you must comply with your lease terms and conditions.

This was a substantial breach of your TAA Lease Contract and has jeopardized any assistance you may have qualified for under the Uniform Relocation Act. We are therefore exercising our right under the lease to terminate your rights of occupancy and possession, effective immediately. You are still liable for rent and other charges you may owe under the lease. If you have not already moved out, demand for possession is hereby made and you are hereby given notice to vacate the premises on or before midnight, _____, which is at least one day from the delivery of this notice as noted below (four days if the notice was mailed). Failure to move out by then will result in an eviction suit being filed and a hearing held before the Justice of the Peace. Delay or postponement of such action does not waive our rights.

DATE: notice was given by the method below

SIGNATURE of the owner's representative

The notice was: (check at least one)

- hand delivered to any one of the residents named above;
- hand delivered to any person 16 or older residing in the dwelling;

- posted on the inside of the dwelling's main entry door (not the screen door) that has a keyless bolting device or keyless deadbolt on it;

- sent by regular mail;
- sent by certified mail, return receipt request; or
- sent by registered mail.

Appendix 12

RESERVED

Appendix 13

GLO Lien Waiver Form



**Texas General Land Office
Community Development and Revitalization
Form 11.25**

Conditional Lien Waiver and Release on Interim Payment Affidavit – Contractor

Project Information	
Subrecipient or State Representative's Name:	Contract and/or WO:
Applicant Name and Address:	Project #:
Project Legal Description:	
Project Type (Rehabilitation, Reconstruction, etc.):	

Contractor Information	
Contractor Name and Address ("Contractor"):	Phone:

Contractor Requested Amount: \$

On receipt by the signer of this document, payment from the Subrecipient in the requested amount (listed above) will be made, payable to the aforementioned Contractor; subsequently, when the payment has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the project's legal description to fulfill the scope of the project.

This release covers the interim payment to the signer for all labor, services, equipment, or materials furnished to the property or to the Subrecipient as indicated in the attached statement(s) or interim payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

Except as specified above, the signer warrants that the signer has already paid or will use the funds received from this interim payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above-referenced project in regard to the attached statement(s) or interim payment request(s).

Contractor further understand that this Affidavit is being given pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code and that the intentional, knowing, or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

The General Land Office may recapture funds that exceed the maximum allowable rate as outlined in the Program's guidelines; that are not allowed under applicable laws, rules and regulations; or that are otherwise inconsistent with the Contract, including any unapproved expenditures.

The undersigned acknowledges that a failure to accurately certify full and final payment of all bills associated with this contract document will result in exclusion from participation in future contracts that utilize CDBG-DR funds.

Prior to payment, Form 11.11 will need to be submitted to the GLO along with Form SD-424D (Assurances – Construction Programs) and a complete insurance binder for the Subcontractor. The Subrecipient is responsible for ensuring the Contractor remains insured throughout the project and/or until their work is complete and satisfactorily agreed upon.

Certification of Contractor

Printed Name of Contractor Company:

Name of Authorized Representative:

Title:

Signature of Authorized Representative:

Date:

Notary's Acknowledgment

State of Texas

County of

Before me, a notary public, on this day personally appeared _____, known to me to be the person whose name is that subscribed to the foregoing document and, being by me first duly sworn, declared the statements therein contained are true and correct.

Signature of Notary

Notary Public State of Texas – Printed Name

NOTARY SEAL

Date Notary's Commission Expires



**Texas General Land Office
Community Development and Revitalization
Form 11.22**

Conditional Lien Waiver and Release on Interim Payment Affidavit – Subcontractor

Project Information	
Subrecipient or State Representative's Name:	Contract and/or WO:
Applicant Name and Address:	Project #:
Project Legal Description:	
Project Type (Rehabilitation, Reconstruction, etc.):	

Subcontractor Information	
Subcontractor Name and Address ("Subcontractor"):	Phone:

Subcontractor Requested Amount: \$

On receipt by the signer of this document, payment from the Contractor in the requested amount (listed above) payable to the aforementioned Subcontractor will be paid; subsequently, when the payment has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the project's legal description to fulfill the scope of the project.

This release covers the interim payment to the signer for all labor, services, equipment, or materials furnished to the property or to the Contractor as indicated in the attached statement(s) or interim payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

Except as specified above, the signer warrants that the signer has already paid or will use the funds received from this interim payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or interim payment request(s).

Subcontractor further understand that this Affidavit is being given pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code and that the intentional, knowing, or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

The undersigned acknowledges that a failure to accurately certify full and final payment of all bills associated with this contract document will result in exclusion from participation in future contracts that utilize CDBG-DR funds.

Prior to payment, Form 11.11 will need to be submitted to the GLO along with Form SD-424D (Assurances – Construction Programs) and a complete insurance binder for the Subcontractor. The Subrecipient is responsible for ensuring the Subcontractor remains insured through the project, and/or until their work is complete and satisfactorily agreed upon.

Certification of Subcontractor

Printed Name of Subcontractor Company:

Name of Authorized Representative:

Title

:

Signature of Authorized Representative:

Date

:

Notary's Acknowledgment

State of Texas

County of

Before me, a notary public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

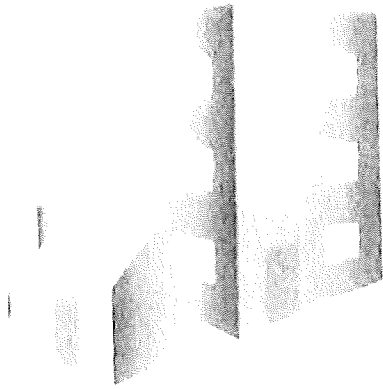
Signature of Notary

Notary Public State of Texas – Printed Name

NOTARY SEAL

Date Notary's Commission Expires

APPENDIX 14
MINIMUM PROPERTY STANDARDS



CITY OF HOUSTON
HOUSING AND
COMMUNITY
DEVELOPMENT

**Minimum Property Standards
For New Construction,
Reconstruction, Rehabilitation, &
Maintenance of Multifamily Facilities**

Table of Contents

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APPENDIX 14

APPENDIX 14

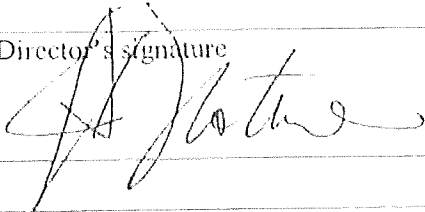
INTRODUCTION

This document is intended to provide the Minimum Property Standards (MPS) for new construction, reconstruction, rehabilitation, and maintenance of multifamily housing facilities that receive federal assistance through the City of Houston Housing & Community Development Department as required by 24CFR §200.925. The primary objective of the Minimum Property Standards is to establish the criteria for the life, health and safety of the residents at the property.

Pursuant to 24CFR§92.251, housing that is constructed or rehabilitated with HOME or CDBG funds must meet all applicable local codes, ordinances, and rehabilitation standards, at the time of project completion. In the absence of a local code addressing new construction, reconstruction, or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, International Building Code (IBC) or its appropriate sub code, and/or the Minimum Property Standards(MPS) in 24CFR§200.925 and §200.926. Housing must meet the accessibility requirements at 24CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29U.S.C.§794) and covered multifamily dwellings, as defined at 24CFR§100.201, and must also meet the design and construction requirements at 24CFR §100.205, which implement the Fair Housing Act (42U.S.C.§3601-§3619).

The MPS supplement local building codes by requiring properties to meet minimum standards of workmanship, durability and performance of various components of the multifamily property during the period of affordability. These components would include doors, windows, gates, stairwells, wall coverings, kitchen cabinets, carpeting, etc. of the property that would be maintained in good and safe working condition that ensures the life, health and safety of the residents at the property.

To achieve this objective, the Housing & Community Development Department conducts an annual inspection of the property in accordance with the 24CFR§92.251(a) and all local codes, construction standards, and city ordinances. Findings identified during the inspection are required to be resolved by the property owner and management. All repairs, materials, and installations must be meet the aforementioned standards of quality and workmanship.

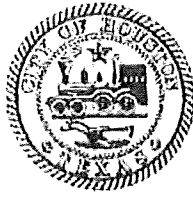
Director's signature 	Date Director Signed 7/5/2011
---	----------------------------------

DEFINITIONS

- A. **ACCESSORY BUILDING** — A subordinate building or structure that is devoted exclusively to the main use of the property and is located on the property.
- B. **ADA**— Americans with Disabilities Act.
- C. **BATHROOM** — A room with a toilet and a lavatory sink in or near that room, with or without a bathtub or shower.
- D. **BUILDING AREA** — Any structure used or intended to be used for supporting or sheltering any use or occupancy.
- E. **CERTIFIED PROFESSIONAL** —Is one who is knowledgeable and qualified in type of work being performed; one who shows either by experience or academic qualifications, to be able to meet the industry standards for the work being performed.
- F. **DEBRIS** — Includes but is not limited to garbage, rubbish, refuse, or wrecked, decayed, dilapidated, or inoperative vehicles or machinery, and parts thereof.
- G. **DWELLING** — A building or structure, or any part of it, occupied or capable of being lawfully occupied, in whole or in part, for the purpose of human habitation and includes a dwelling unit and a building that would be used for this purpose except for its state of disrepair.
- H. **DWELLING UNIT** — A room or a suite of rooms operated as a housekeeping unit, used or intended to be used as a domicile by 1 or more persons and supporting general living conditions and includes cooking, eating, sleeping, and sanitary facilities.
- I. **EGRESS** – A permanent and unobstructed means of exiting from the dwelling in an emergency escape or rescue situation.
- J. **ENERGY STAR RATED** – Includes all systems, components, equipment, fixtures and appliances that meet strict energy efficiency performance criteria established, as a joint effort, by the federal Environmental Protection Agency, the U.S. Department of Energy and the U.S. Department of Housing and Urban Development and that carry the Energy Star label as evidence of meeting the energy efficiency performance criteria.
- K. **FAIR HOUSING ACT (24CFR§100.25)** — Federal law that prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and insurance companies whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, family status or disability.
- L. **GRAFFITI** — Any unauthorized inscription, mark, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise applied to any surface of public or private property to the extent that the graffiti was not authorized in advance by the owner or occupant of the property.
- M. **GROUND COVER** — Suitable material applied to the ground to prevent erosion of the soil and includes concrete, flagstone, gravel, asphalt, grass or other form of landscaping.

- N. **HABITABLE ROOM** — A room in a dwelling designed, lawfully used or capable of being lawfully used for living, sleeping, cooking or eating purposes. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas (rooms) are not considered habitable spaces (rooms).
- O. **HANDRAIL** — A continuously graspable rail forming the top part of a balustrade or guard on stairs, landings, raised walkways and ramps adhered to a wall or a guard forming part of the stair, landing, walkway or ramp intended to provide guidance and support to the user and to arrest falls.
- P. **MINIMUM PROPERTY STANDARDS (MPS)** — The standards for the maintenance and occupancy prescribed for a multifamily property. Using these standards as a baseline for monitoring, a housing inspector identifies the physical deficiencies of a property and dwelling unit that need to be repaired.
- Q. **MULTIFAMILY DWELLING**— A building containing 3 or more dwelling units.
- R. **NONHABITABLE FLOOR AREA** — Any room or space in a dwelling, or dwelling unit, other than a habitable room and includes a washroom, bathroom, toilet room, laundry, pantry, lobby, communicating corridor, stairway, closet, boiler room, garage, or space for service and maintenance of any building for public use and for access to and vertical travel between stories.
- S. **NONRESIDENTIAL PROPERTY** — Land, a building or structure used or capable of being used for other than residential purposes.
- T. **OCCUPANCY** — The use or intended use of a building or part of a building for the shelter or support of persons, animals or property as established by the Building Code and city ordinances.
- U. **PEST**— Any mouse, rat, bed bug, flea, wasp, hornet or cockroach, but does not include and domesticated mouse or rat
- V. **PROPERTY** — A building or structure or part of a building or structure and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences, retaining walls and erections thereon whether heretofore or hereafter erected, and includes vacant property.
- W. **REPAIR** — Includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a property conforms with the standards established in a by-law passed under this section. All repairs shall be made in a good workmanlike manner with materials that are suitable and sufficient for the purpose and free from defects. The requirement that repairs be made in a "good workmanlike manner" includes, ensuring the component repaired can perform its intended function and finishing the repair in a manner reasonably compatible in design and color with adjoining decorative finishing materials. Repairs shall be made with "materials that are suitable and sufficient for the purpose" includes a requirement for materials reasonably compatible in design and color with adjoining decorative finishing materials.
- X. **RESIDENTIAL PROPERTY** — Land, a building or structure used, capable of being used, designed or intended for residential use.
- Y. **RETAINING WALL** — A wall or similar structure built to hold back, confine, or sustain the pressure from a bank of earth, loose stone or fill material separating two grade levels

- Z. SANITARY FACILITIES** — A room or rooms containing 1 or more toilets, washbasins, bathtubs or showers or any combination thereof and includes a toilet room.
- AA. SECTION 504 of the REHABILITATION ACT of 1973 (24 CFR§8.22)** — Federal law prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including the U.S. Department of Housing and Urban Development (HUD) as well as in programs conducted by federal agencies including HUD. This regulation requires that new construction of multifamily projects be designed and constructed to be readily accessible to and usable by persons with disabilities. Both individual units and the common areas in the building must be accessible.
- BB. SEWAGE SYSTEM** — The City sanitary sewer system or a private sewage disposal system approved by the City.
- CC. SPECIFICATIONS** — Sometimes referred to as “written rehabilitation standards” or “specs,” that identify the minimum acceptable grades and types of materials to be used and to provide the basis for how materials and equipment shall be installed.
- DD. STORY** — The portion of a building that is situated between the top of any floor and the top of the floor next above it; or that is situated between the top of the floor and the ceiling above the floor, if there is no floor above it
- EE. VEHICLE** — Includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power.
- FF. WORKMANSHIP** --- refers to the quality of the work performed by a craftsman.
- GG. YARD** — the land within the boundary lines of the property and not occupied by the principal building;



City of Houston Housing and Community Development Department Minimum Property Standard for New Construction and Reconstruction of Multifamily Rental Housing

OVERVIEW & APPLICABILITY

The standards contained in this document establish the minimum property standards for New Construction and Reconstruction under the City of Houston's (COH) Multifamily Rental Housing Program.

PURPOSE

This document serves as the minimum standard for City of Houston multifamily rental housing. The minimum standard ensures the property must be free of those foreseeable hazards and adverse conditions that may affect the life, health, and safety of the occupants, and those conditions which may impair the customary use of the property. Fire safety and the structural soundness of the dwelling must be insured as well. In addition to these standards all units must comply with the more restrictive of the following:

- COH Building Code and Code of Ordinances
- The International Building Code (IBC) 2006 adopted by the City of Houston or the latest adopted edition of the IBC and any applicable code required by the pertaining Municipality.
- The International Residential Code (IRC) 2000 adopted by the City of Houston or the latest adopted edition of the IRC and any applicable code required by the pertaining Municipality.
- The International Energy Conservation Code (IECC) 2006 adopted by the City of Houston or the latest adopted edition of the Model Energy Code (MEC) and any applicable code required.
- HUD 24 C.F.R Part 200.925a-c/296 Rules for Multifamily and Care-Type Housing
- HUD C.F.R Part 8 Section 504 of the Rehabilitation Act of 1973, ADA, UFAS, FHA, and TAS where applicable.
- The requirements from other governing entities such as Homeowners Associations, and Local and Federal regulations pertaining to zoning, traffic, drainage, flood plains and fire prevention (NFPA)

MINIMUM STANDARDS FOR PROPERTY EXTERIOR

GRADING & DRAINAGE OF PROPERTY

1. Entire property shall be graded and maintained so no stagnant water will accumulate or stand on the premises, within or around any building or structure located on the premises.
2. Ground areas around buildings shall be sloped away from walls to eliminate low areas where standing water may collect.
3. All rainwater shall be drained and conveyed from every roof so as not to cause dampness/ damage to walls, ceilings, or floors of any habitable rooms, bathroom, toilet room, laundry room, or any other type of room therein.
4. Nowhere on the property shall there be standing water that causes a public health hazard.

NON-DWELLING STRUCTURES

Every foundation, wall, roof, window, door, hatchway, and every other entryway of every non-dwelling structure shall be constructed in a way to prevent the structure from becoming a harborage for rodents, snakes, vermin, and insects, and shall be kept in a state of maintenance and repair.

STEPS, SIDEWALKS, DRIVEWAYS, PARKING LOTS & PAVING

1. All walkways, sidewalks and parking lots are to be designed to comply with all requirements of section 504 of the Rehabilitation Act of 1973 (24 CFR§8.22 & 23) and the Fair Housing Act (24 CFR§100.205).
2. A walkway shall be provided from the principal entrance of every building to a public street or parking lot area.
3. Parking lots are to be graded and drained to prevent ponding of water and to direct the flow of water away from the walls of all buildings.
4. Parking lots are to be provided with suitable markings to indicate parking spaces, fire lanes and the markings shall be maintained so as to be clearly visible.
5. Where parking spaces are adjacent to a building, property line, sidewalks or walking paths, parking stops or a 6" vertical curb shall be provided shall be properly anchored and secured, and properly aligned and positioned to each parking space.
6. Parking lots shall contain adequate lighting.

MISCELLANEOUS

1. Swimming pools, decorative fountains or retention ponds must be enclosed by a fence suitable to prevent unwanted activities or unsupervised children access to those areas. Entrance locations must have acceptable locking hardware.

2. The entire property must be enclosed by a minimum 6' fence constructed of masonry, metal, chain link, wood, or wood composite. Fence structure must be secure enough to withstand wind and rain.

FOUNDATIONS, EXTERIOR WALLS, ROOFS, SOFFITS & FASCIA

1. Every building shall have a foundation acceptable for construction under the provisions of the local building codes, and shall be sound, reasonably plumb, as designed by registered structural engineer.
2. Every foundation, exterior wall, roof, soffit, fascia and all component parts shall be weather tight, watertight, rodent proof, and insect-proof and shall be kept in a state of maintenance and repair.

EXTERIOR WALL

1. All exterior wood surfaces of all non-dwelling structures shall be properly protected from the elements and from decay and rot by lead-free paint or other approved protective coatings.
2. All exterior walls must be of standard construction with a minimum 2x4's at 16 inches on center when appropriate. Insulation sheathing shall be installed on the exterior, covered with an approved exterior siding material.
3. All exterior surface material shall be protected from weather and the elements by lead-free paint or other protective coatings i.e., stain, in accordance with industry recognized standards. The exception to painting shall be all types of exterior materials acceptable to weathering without deterioration, i.e., siding.

WINDOWS & EXTERIOR DOORS

1. All windows and doors must be Energy Star rated.
2. Every habitable room shall have at least one (1) open air space. The minimum total window area, measured between stops, for every habitable room shall be as follows:
 - a. 1/12 of the floor area if two or more separate windows exist, or;
 - b. 1/10 of the floor area if only one window exists;
 - c. A minimum of 12 square feet of window area is required in habitable rooms other than kitchens;
3. Every window sash shall be fully equipped with glass windowpanes, which are without cracks or holes, and all panes shall be secured with an adequate amount of putty. Said putty shall not be cracked, broken or missing.
4. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction, so as to exclude rain, as completely as possible and to the maximum extent feasible substantially exclude wind from entering the dwelling or structure, i.e., it must have adequate weather-stripping. Every window sash shall be in good condition and shall fit tightly within its frame.
5. Every window, other than a "fixed window", shall be capable of being easily opened and shall be held in position by window hardware in accordance with manufacturer's design.

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6. Every front, rear and side door shall be not less than 3'0" in width and not less than 6' 6" in height, except where larger doors and doorways are required.
7. All exterior doors to the outside or to a common public hall shall be solid core and be equipped with security locks.
8. All windows shall have a security device/lock.
9. Every exterior and interior door, door hinge, and door latch and/or lock shall be installed in good working condition.

ROOF COVERING

All roofs must have a minimum 4" to 1'-0" roof pitch. Every roof of a building, and all its components, shall be weather-tight, free from leaks, prevent ponding of water, be free from unsecured or unsafe objects and materials, and have a 25 year minimum life on the materials.

VENTILATION

1. Every window opening to outdoor space, intended to provide for required ventilation, shall be supplied with screens covering the required ventilation area.
2. The material used for all such screens shall be not less than 16 mesh per inch and shall be properly installed to prevent the entrance of flies, mosquitoes or other insects. Half screens on windows may be allowed, provided, they are properly installed and prevent the entrance of flies, mosquitoes or other insects.
3. A kitchen or bathroom is acceptable without a window area, provided, there is a mechanical means of ventilation.

STAIRWAYS, BALCONY'S & HALLWAYS

1. Every interior and exterior stairway, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon.
2. Handrails are not required for interior stairs having not more than 2 risers and serving a single dwelling unit and exterior stairs having not more than 3 risers and serving a single dwelling unit.
3. Handrails are required for all exterior stairs and balconies.
4. All balconies and platforms, which are 30" or more above grade, shall have a protective railing not less than 36" in height above the balcony or platform level.
5. All multiple dwellings shall have a second exit stairway or approved fire escape available to all occupants from the second floor and above of all such structures.

ELECTRICAL & EXTERIOR LIGHTING

1. Public halls, buildings and stairways shall be lighted at all times with an artificial lighting system. The said system shall provide at least 2 foot candles of illumination on all parts thereof, at all times, by means of properly located electric light fixtures, provided, that such

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artificial lighting may be omitted from sunrise to sunset where an adequate amount of natural light is provided. Whenever the occupancy of the building exceeds 100 persons, the artificial lighting system as required herein, shall be on an emergency circuit.

2. The required intensity of illumination shall apply to both natural and artificial lighting.

MINIMUM STANDARDS FOR PROPERTY INTERIOR

MINIMUM CEILING HEIGHT

1. All habitable rooms in a dwelling or dwelling unit shall have a minimum ceiling height of 7'-6".
2. All rooms, except kitchen and/or kitchenettes and baths, shall have a minimum width of 7'-0".
3. At least 1/2 of the floor area of every habitable room located above the 1st floor shall have a ceiling height of 7'-6", and the floor area of that part of any room where the ceiling height is less than 5' shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining maximum floor area.

DWELLING ROOMS, FLOORS & DOORS

1. Minimum Room configurations and sizes shall be as follows:
 - a. The minimum standard in a dwelling unit is as follows: One functional toilet with seat, lavatory, towel rack, ring or hook, and either a shower or a bathtub. Any additional baths in a unit, at minimum, must contain one functional toilet with seat, towel rack, ring or hook and a lavatory.
 - b. Single bedrooms shall be at least 100 square feet in area with the room having a minimum dimension on one side of 8'-0". Bedrooms accessed off another bedroom shall not count as a separate room.
 - c. Living rooms shall be at least 80 square feet in area.
 - d. All bedrooms must have access to closets for storage of clothing.
2. Every occupant of every dwelling unit shall have unrestricted access to a toilet, to a bath, and to a kitchen sink and lavatory basin located within that dwelling unit. No dwelling or dwelling unit containing (2) or more sleeping rooms shall have such room arrangement that access to a bathroom or toilet room intended for use by the occupants can be had only by going through another sleeping room or bathroom or toilet room.
3. Every bathroom, toilet room, kitchen and utility room floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
4. Floor covering in bathroom shall be vinyl type or tile and shall be free from defects. Floor finishes shall be slip resistant when wet and shall be sealed around their edges with silicone sealant. Any flooring material that permits water to seep into the subfloor is unacceptable.
5. Laminate, wood, vinyl, or other similar types of flooring is not acceptable in flats above the ground floor level (except for kitchens and bathrooms), due to potential noise disturbance to tenants below.

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6. Dwelling units with 2 or more bedrooms shall have an additional storage area of at least 4 square feet per bedroom. This storage requirement does not necessarily have to be located in the bedrooms.
7. All bedrooms must have a functional door, which may be of hollow core material, which closes, and can be locked from the inside. The width must be at least 32".
8. All bathroom doors must be at least 24" wide by 6'-0" in height and have locking doorknobs from the inside of the bathroom or have other ways of locking the door (standard bathroom door knobs).

KITCHEN FACILITY (EXCEPT FOR SINGLE ROOM OCCUPANCY (SRO))

1. Every dwelling unit shall have a kitchen room or kitchenette equipped with the following:
 - a. **Kitchen Sink** - an approved kitchen sink, properly connected to both hot and cold running water lines, properly functions under normal pressure, and maintained in working order.
 - b. **Stove** - a stove (gas or electric), properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended. Installation of overhead fans is required over the cooking area. (Stoves may not be required in some efficiency size apartments when approved by the Director.)
 - c. **Refrigerator** - a refrigerator, properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended.
2. **Work Space & Utilities** - if tenants are required to furnish their own appliances, the landlord shall furnish sufficient space and all required electrical connections, properly installed, to facilitate the use of said appliances.
3. Every dwelling unit in which meals are prepared shall have a sink that is installed in a counter having a backsplash and a drain board made of material impervious to water. The sink shall be connected to an adequate supply of potable running hot and cold water and be connected to the drainage system of the dwelling unit.
4. Sinks and faucets must meet minimum applicable standards. Sink and a backsplash shall be water and grease resistant.
5. Every dwelling unit shall have a work surface of at least 8 square feet, which shall be impervious to grease and water and a space sufficient to accommodate a cooking range or countertop cooking unit, beside or in the countertop and without placing the device in a doorway or a path of egress.
6. Cabinets, cupboards or pantry for the storage of food, dishes, and cooking utensils shall be provided.
7. Stove shall be either gas or electric and oven shall be clean and provided with shelves. Installation of overhead fans may require installation of a cabinet for attachment of the fan.
8. Each kitchen in a dwelling unit shall have an approved, connected and operating gas or electrical supply for cooking and refrigeration appliances.
9. GFCI (ground fault circuit interrupter) outlet receptacles will be required on all counter tops within 6'-0" of sink areas.

10. Minimum lighting in kitchens will consist of one lighting fixture in the kitchen cooking area and 1 lighting fixture in any adjoining eating/dining area.
11. The refrigerator/freezer shall have a minimum capacity of at least 18 cu ft (refrigerator) and 4 cu ft (freezer) (Smaller refrigerators may be allowed in some efficiency size apartments when approved by the Director.)

BATHROOM FACILITIES

1. Every dwelling unit shall contain a bathroom equipped with the following items:
 - a. **A toilet** equipped with adequate running water connected to the water supply. The toilet shall be clean, secure, and free of defects, with a secure seat and the bowl shall fill at a reasonable rate. Toilet needs to be connected only to a cold water supply. No toilet or urinal shall be located within a habitable room.
 - b. **A wash basin/sink** that shall be located in or adjacent to every room that contains a toilet or urinal. Fixtures shall be connected with an adequate supply of potable, hot and cold running water. The sink must have a proper drain with P-trap and be vented to the outside. A water resistant back splash shall be provided of a minimum height of 4" that is sealed around the edges with bathroom grade silicone sealant.
 - c. **A bathtub/shower** may be in the same room as the toilet and lavatory or in a separate room. The bathtub shall be of a reasonable design so as not to give rise to a slipping hazard to those who use the shower. Bathtub and shower walls shall be covered to a height sufficient to protect the walls from water penetration. Bathtub shall be fitted securely and there shall be no leaks. All shower bases shall be adequately sealed and a curtain rod or door shall be provided of a sufficient standard to prevent water damage to the floor.
 - d. **A toilet paper roll holder & towel bar** shall be provided within 12" of toilet or tub.
 - e. **Medicine cabinet & mirror** Medicine cabinets that will limit access by children and a minimum 2'x2' mirror are required in all full baths.
 - f. **Light fittings** shall be of a sealed type appropriate for bathrooms.
 - g. **Ventilation** shall be provided.
2. Every toilet and every bath shall be contained in a room or within separate rooms, which affords privacy to a person within said room or rooms.
3. All bathrooms and toilet rooms shall be located within an area accessible from within the building.
4. Every communal bath shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities, without going through a dwelling unit of another occupant and without going outside of the dwelling.
5. Toilets and bathrooms shall have doors with a privacy-type lock.

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PLUMBING

1. Every dwelling unit shall contain at least the minimum number and types of working plumbing fixtures, consisting of a water closet; a hand wash basin; and a bathtub or shower.
2. Every supplied facility, piece of equipment, or utility which is required under this section, shall be constructed and installed in safe, sanitary working condition, free from leaks, defects and obstructions.
3. Every dwelling and every building to which water is available under pressure through piping shall be provided with piping for hot and cold water connected to every kitchen fixture, every washbasin, bathtub, shower, sink and laundry area; and piping for cold water connected to every toilet and hose bib.
4. Water taps shall be free of defects with no leaks or drips and in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems. The type of water tap to be fitted should have a ceramic disc washer and should be quarter turn or lever operated.
5. Every dwelling shall have supplied water-heating facilities which are properly installed, in working condition, and free of leaks; properly connected to any required hot water lines; and capable of heating water to be drawn for every bath as well as general usage.
6. Hot water storage associated with water heating facilities shall be not less than the following minimum capacities:
 - a. One (1) dwelling unit - 30 gallons
 - b. Two (2) dwelling units - 40 gallons
 - c. Three (3) or more dwelling units and rooming houses - 50 gallons or more
7. Sizes and/or number of water heaters shall be based upon the number of units served. No water heaters shall be allowed in sleeping rooms, bathrooms or closets, unless closet is dedicated for the purpose of housing plumbing and mechanical equipment. Water heaters in a utility room are acceptable. All water heaters shall be properly vented and sealed and shall be equipped with a pressure relief valve and drip leg.

VENTILATION

1. Every bathroom, toilet room, and kitchen shall comply with the light and ventilation requirements for habitable rooms contained above, except that no window shall be required in adequately ventilated bathrooms, toilet rooms or kitchens equipped with a ventilation system installed in good working condition and located to ensure its proper operation.
2. All bedrooms must have an egress window in addition to the door. Egress windows must be no more than 44" from the floor and permit at least 5.7 square feet of egress area. Windows must be operable, have locking mechanisms, and provide for ventilation. If there are living accommodations in a basement, an egress window is required.
3. All bathrooms must have an operational window, electric vent fan, or other acceptable method of ventilation.
4. Ceiling fans installed in general living areas shall be Energy Star rated and installed to manufacturer's requirements.

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ELECTRICAL & LIGHTING

1. The capacity of the system of circuits and electrical outlets within a building shall be adequate for the intended use of all rooms, and adequate electrical outlets shall be installed to prevent the need for extension cords or other extensions being used as a permanent wiring system.
2. Every habitable room within such dwelling shall contain, at a minimum, 2 separate and remote wall type electric convenience outlets.
3. Habitable rooms over 120 square feet, shall contain, at a minimum, 3 separate and remote wall type electric convenience outlets. All newly installed outlets shall be grounded type outlets.
4. Temporary wiring or extension cords shall not be used as permanent wiring.
5. All receptacles in the kitchen, bathroom and lavatory, must be GFCI type (Ground Fault Circuit Interrupter) and outlets must be provided within 6 feet from any sink or lavatory.
6. Receptacle convenience outlets installed on the exterior of the structure or on open porches, breezeways, garages, utility rooms, etc. shall be of the GFCI type. All electric lighting fixtures installed on the exterior shall be of the type approved for exterior use.
7. All heavy duty appliances, i.e., window air conditioners, freezers, refrigerators, electric stoves, washers, electric dryers, microwaves, etc., shall be supplied with their own dedicated outlet(s) on separate circuits, as applicable.
8. Outlets are required to permit coverage of the entire room by an appliance with a 6 foot cord.
9. Every habitable room shall have at least 1 ceiling or wall type electric light fixture, controlled by a wall switch, or a wall type grounded electric convenience outlet controlled by a remote switch in the interior of the room next to the entrance.
10. Every toilet room, bathroom, laundry, and hallway (where applicable) shall contain at least 1 supplied ceiling or wall type electric light fixture, controlled by a wall switch, and at least 1 wall type grounded electric convenience outlet. Wall type convenience outlets used in bathrooms and kitchens shall be the GFCI type.
11. Light switches in an open staircase must be double switched at the top and bottom of the stairs. Living quarters will be electrically switched at entrances. Weather proof exterior lighting at the front and back doors must be provided, and these lights must be switched from the interior at the entrance.

HEATING & AIR CONDITIONING FACILITIES

1. Each dwelling unit shall be supplied with its own heating & air condition system that is properly installed, in safe and good working condition, and be capable of adequately heating and cooling all habitable rooms, bathrooms, and toilet rooms contained therein to a temperature of at least 72°F measured at a distance of 36" above floor level under ordinary winter and summer conditions. Heating & air conditioning system must be adequate for healthful and comfortable living conditions.
2. Air conditioning equipment shall be installed in accordance with the manufacturer's specifications.
3. Every central heating & air condition units shall be located and installed with the following: APPENDIX 14

- a. Every heat duct, steam pipe and hot water pipe shall be free of leaks and shall function such that an adequate amount of heat is delivered where intended and in such a manner so as to afford protection against involvement of egress facilities or egress routes in the event of uncontrolled fires in the structure.
 - b. Every fuel burning heating unit or water heater shall be effectively vented in a safe manner to a chimney or duct leading to the exterior of the building. The chimney duct and vents shall be of such a design as to assure proper draft and shall be adequately supported.
 - c. Every steam or hot water boiler and every water heater shall be protected against overheating by appropriate temperature and pressure controls.
 - d. A thermostat that controls both heating and cooling should be located near the return air grill.
4. A/C condenser units shall be a minimum 14 SEER rating. All units shall be installed in a non-obstructed area and well supported on a level surface.
 5. The condenser unit's refrigerant line (larger line) must be insulated, and have secured wiring and connections. An electric disconnect switch shall be installed for maintenance and repairs.

SMOKE DETECTORS

1. All residential structures shall have U.L. approved "hard wired" smoke detectors , properly installed in all bedrooms and in area adjacent to bedrooms in accordance with manufacturer's instructions .
2. When more than one smoke alarm is required in an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

ENERGY CONSERVATION

All structures shall comply with certain energy conservation measures (U.S. Department of Energy recommendations). These measures include, but are not necessarily limited to, the following:

1. Installation of insulation or the installation of additional insulation, especially in the attic/ceiling areas: The recommended level for ceiling insulation is to a resistance factor of R-30, wherever possible.
2. An air infiltration barrier, such as Tyvek or approved equal, shall be installed on all exterior walls. The minimum R factor is R-19 or R-13 plus R-5 foam. The installation of fan-fold foam or foam sheathing may be added to increase household R-ratings.
3. The installation of weather stripping at all exterior doors and windows is required. Doors shall be Energy Star rated. Door jams will be sealed and thresholds will be caulked.
4. Provide caulking around exterior doors and windows, at the foundation/sill plate union, and at other air-infiltration areas.
5. All heat ducts and hot water or steam heat distribution piping shall be insulated or otherwise protected from heat loss where such ducts or piping runs are located in unheated spaces.

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Similarly, distribution piping for general use hot water shall also be protected from heat loss where such piping is located in unheated spaces. All water distribution piping shall be protected from freezing.



City of Houston Housing and Community Development Department Minimum Property Standard for Rehabilitation Construction for Multifamily Rental Housing

OVERVIEW

The standards contained in this document establish the minimum property standard for Rehabilitation Construction under the City of Houston's Multifamily Rental Housing Program.

PURPOSE

This document serves as the minimum standard for City of Houston multifamily rental housing rehabilitation projects. It is to provide guidance to achieving those **minimum standards in the areas of work which your project may address**. This document **does not mandate that all the outlined areas are undertaken as a part of your project**. This minimum standard is designed to ensure that the property is free of those foreseeable hazards and adverse conditions that may affect the life, health, and safety of the occupants, and those conditions which may impair the customary use of the property. Fire safety and the structural soundness of the dwelling must be insured as well. In addition to these standards all units must comply with the more restrictive of the following for any work undertaken:

- COH Building Code and Code of Ordinances
- The International Building Code (IBC) 2006 adopted by the City of Houston or the latest adopted edition of the IBC and any applicable code required by the pertaining Municipality.
- The International Residential Code (IRC) 2000 adopted by the City of Houston or the latest adopted edition of the IRC and any applicable code required by the pertaining Municipality.
- The International Energy Conservation Code (IECC) 2006 adopted by the City of Houston or the latest adopted edition of the Model Energy Code (MEC) and any applicable code required by the pertaining Municipality.
- The Lead Based Paint regulations as described in 24 CFR, Part 35 for units built before 1978.
- HUD 24 C.F.R Part 200.925a-c/296 Rules for Multifamily and Care-Type Housing
- HUD C.F.R Part 8 Section 504 of the Rehabilitation Act of 1973, ADA, UFAS, FHA, and TAS where applicable.
- The requirements from other governing entities such as Homeowners Associations and Local and Federal regulations pertaining to zoning, traffic, drainage, flood plains and fire prevention (NFPA)

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MINIMUM STANDARDS FOR PROPERTY EXTERIOR

GRADING AND DRAINAGE OF PROPERTY

1. Entire property shall be graded and maintained so no stagnant water will accumulate or stand on the premises, within or around any building or structure located on the premises.
 2. Ground areas around buildings shall be sloped away from walls to eliminate low areas where standing water may collect.
 3. All rainwater shall be drained and conveyed from every roof so as not to cause dampness/ damage to walls, ceilings, or floors of any habitable rooms, bathroom, toilet room, laundry room, or any other type of room therein.
 4. If present, all rainwater draining devices such as gutters and downspouts shall be kept in a state of maintenance and repair.
- Nowhere on the property shall there be standing water that causes a public health hazard.

NON-DWELLING STRUCTURES

Every foundation, wall, roof, window, door, hatchway, and every other entryway of every non-dwelling structure shall be constructed in a way to prevent the structure from becoming a harborage for rodents, snakes, vermin, and insects.

STEPS, SIDEWALKS, DRIVEWAYS, PARKING LOTS & PAVING

1. All walkways, sidewalks and parking lots are to be designed and monitored in accordance with section 504 of the Rehabilitation Act of 1973 (24 CFR§8.22 & 23) and the Fair Housing Act (24 CFR§100.205).
2. A walkway shall be maintained from the principal entrance of every building to a public street or parking lot area.
3. Parking lots shall be appropriately sloped so as to prevent ponding of water and to direct the flow of water to the appropriate storm drainage infrastructure.
4. Paved parking lots shall have clearly visible and suitable markings to indicate parking spaces and fire lanes.
5. Parking stops or a 6" vertical curb shall be provided where parking spaces are adjacent to a building, property line, sidewalks or walking paths, shall be properly anchored and secured, and properly aligned and positioned to each parking space.
6. Parking lots shall contain adequate lighting.

MISCELLANEOUS

1. Swimming pools, decorative fountains or retention ponds must be enclosed by a fence suitable to prevent unwanted activities or unsupervised children access to those areas. Entrance locations must have acceptable locking hardware.

2. The entire property must be maintained and enclosed by a minimum 6' fence constructed of masonry, wood, wood composite, chain link, or metal. Fence structure must be secure enough to withstand wind and rain.

FOUNDATIONS, EXTERIOR WALLS, ROOFS, SOFFITS & FASCIA

1. Every building shall have a foundation acceptable under the provisions of the local building codes and shall be sound, reasonably plumb, and adequate to carry the loads imposed on them. At the City's sole discretion, reports from certified/licensed professionals commenting on the condition/suitability of the foundations may be required.
2. Every foundation, exterior wall, roof, soffit, fascia and all component parts shall be maintained to be weather tight, watertight, rodent proof, and insect-proof.

EXTERIOR WALL SURFACES

1. All exterior wood surfaces of all non-dwelling structures shall be properly protected from the elements and from decay and rot by lead-free paint or other approved protective coatings. If units are constructed on or before 1978, treatment of all applicable surfaces shall be in full compliance with the Lead Base Paint regulations as found at 24 CFR Part 35, including all future amendments as published by HUD.
2. A lead-based paint analysis must be conducted on structures constructed prior to 1978. If testing reveals the existence of lead-based paint surfaces, they must be removed or covered as prescribed by HUD Lead-Based Paint regulations.
3. All exterior walls framing, exposed during the course of the rehabilitation must be of standard construction with a minimum 2x4's at 16 inches on center, when appropriate. Insulation sheathing shall be installed on the exterior, covered with an approved exterior siding material.
4. All exterior surface material shall be protected from weather and the elements by lead-free paint or other protective coatings i.e., stain, in accordance with industry recognized standards. The exception to painting shall be all types of exterior materials acceptable to weathering without deterioration, i.e., siding.
5. Every exposed ceiling or exterior wall of a residential building when opened or replaced during the course of alterations or renovations shall be insulated, in order to minimize heat loss, air infiltration and moisture condensation on the interior surfaces, in accordance with the local building codes.

WINDOWS & EXTERIOR DOORS

1. All windows and doors being replaced must be Energy Star rated.
2. Every habitable room shall have at least one (1) open air space. The minimum total window area, measured between stops, for every habitable room shall be as follows:
 - a. 1/12 of the floor area if two or more separate windows exist, or;
 - b. 1/10 of the floor area if only one window exists;
 - c. A minimum of 12 square feet of window area is required in habitable rooms other than kitchens;

3. Every window sash shall be fully equipped with glass windowpanes, which are without cracks or holes, and all panes shall be secured with an adequate amount of putty. Said putty shall not be cracked, broken or missing.
4. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction, so as to exclude rain, as completely as possible and to the maximum extent feasible substantially exclude wind from entering the dwelling or structure, i.e., it must have adequate weather-stripping. Every window sash shall be in good condition and shall fit tightly within its frame.
5. Every window, other than a "fixed window", shall be capable of being easily opened and shall be held in position by window hardware in accordance with manufacturer's design.
6. Every front, rear and side door shall be not less than 2' 4" in width and not less than 6' 6" in height, except where larger doors and doorways are required to accommodate handicapped access.
7. All exterior doors to the outside or to a common public hall shall be solid core and be equipped with adequate security locks.
8. All windows shall have a security device/lock.
9. Every exterior and interior door, door hinge, and door latch and/or lock shall be in good working condition, function as originally intended, and when closed, shall fit well within its frame.

ROOF COVERING

1. All pitched roofs must have a minimum 4" to 1'-0" roof pitch.
2. Whenever feasible, in one to three story stick and brick construction, flat roofs over dwelling units should be eliminated in favor of pitched roofs.
3. Reconstruction of the roof should occur whenever the damaged area is wider than 9 feet on the stooped side and leaking cannot be prevented by installation of rolled roofing or rubberized roofing membrane.
4. Every roof of a building, and all its components, shall be weather-tight, free from leaks, prevent ponding of water, be free from unsecured or unsafe objects and materials, and have a 25 year minimum life on the materials.

VENTILATION

1. Every window opening to outdoor space, intended to provide for required ventilation, shall be supplied with screens covering the required ventilation area.
2. The material used for all such screens shall be not less than 16 mesh per inch and shall be properly installed, to prevent the entrance of flies, mosquitoes or other insects. Half screens on windows may be allowed, provided, they are properly installed and are bug and insect tight.
3. A kitchen or bathroom is acceptable without a window area, provided, there is a mechanical means of ventilation in working order.

STAIRWAYS, BALCONY'S & HALLWAYS

1. Every interior and exterior stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon.
2. Handrails are not required for interior stairs having not more than 2 risers and serving a single dwelling unit and exterior stairs having not more than 3 risers and serving a single dwelling unit.
3. All balconies and platforms, which are 30" or more above grade, shall have a protective railing not less than 36" in height above the balcony or platform level.
4. All multiple dwellings shall have a second exit stairway or approved fire escape available to all occupants from the second floor and above of all such structures.

ELECTRICAL & EXTERIOR LIGHTING

1. Public halls, buildings and stairways shall be lighted at all times with an artificial lighting system. The said system shall provide at least 2 foot candles of illumination on all parts thereof, at all times, by means of properly located electric light fixtures, provided, that such artificial lighting may be omitted from sunrise to sunset where an adequate amount of natural light is provided. Whenever the occupancy of the building exceeds 100 persons, the artificial lighting system as required herein, shall be on an emergency circuit.
2. The required intensity of illumination shall apply to both natural and artificial lighting.
3. All electric panel boxes shall be properly labeled and accessible from either the interior or exterior of the dwelling unit. The electrical switch boxes on the exterior must be capable of being locked, but must allow emergency access. If the unit's panel box is located on the exterior of the unit, it must be locked, but access by the tenant must be provided at all times to address tripped breakers.

PLUMBING - WATER SUPPLY

All dwelling units shall be connected to a municipal water supply..

MINIMUM STANDARDS FOR PROPERTY INTERIOR

MINIMUM CEILING HEIGHT

1. Wherever possible, all habitable room in a dwelling or dwelling unit shall have a minimum ceiling height of 7'-6".
2. All rooms, except kitchen and/or kitchenettes and baths, shall have a minimum width of 7'-0" unless such provision would require major additional reconstruction.
3. At least 1/2 of the floor area of every habitable room located above the 1st floor shall have a ceiling height of 7'-6", and the floor area of that part of any room where the ceiling height is less than 5' shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining maximum floor area.

DWELLING ROOMS, FLOORS & DOORS

1. If the project includes redesigning floor plans Minimum Room configurations and sizes shall be as follows:
 - a. single bedrooms shall be at least 100 square feet in area with the room having a minimum dimension on one side of 8'-0".
 - b. Bedrooms accessed solely through another bedroom shall not count as a separate room.
 - c. Living rooms shall be at least 80 square feet in area. Rooms of less than 50 square feet cannot be used as living rooms or bedrooms.
 - d. All bedrooms must have access to closets for storage of clothing. On existing housing, closets in adjoining hall areas are acceptable.
2. Every occupant of every dwelling unit shall have unrestricted access to a toilet, to a bath, and to a kitchen sink and lavatory basin located within that dwelling unit. No dwelling or dwelling unit containing 2 or more sleeping rooms shall have such room arrangement that access to a bathroom or toilet room intended for use by the occupants can be had only by going through another sleeping room or bathroom or toilet room.
3. Every bathroom, toilet room, kitchen and utility room floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
4. Carpeting in bathrooms is generally not considered an appropriate floor material.
5. Laminate, wood, vinyl, or other similar types of flooring is not acceptable in flats above the ground floor level (except for kitchens and bathrooms), due to potential noise disturbance to tenants below.
6. Floor covering in bathroom shall be vinyl type or tile and shall be free from defects. Floor finishes shall be slip resistant when wet and shall be sealed around their edges with silicone sealant. Any flooring material that permits water to seep into the subfloor is unacceptable.
7. When possible, dwelling units with 2 or more bedrooms shall have a storage floor area of at least 4 square feet per bedroom. This storage requirement does not necessarily have to be located in the bedrooms.

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8. All bedrooms must have a functional door, which may be of hollow core material, which closes, and can be locked from the inside. The width must be at least 32".
9. All bathroom doors must be at least 24" wide by 6'-0" in height and have locking doorknobs from the inside of the bathroom or have other ways of locking the door (standard bathroom door knobs).

KITCHEN FACILITY (EXCEPT FOR SINGLE ROOM OCCUPANCY (SRO))

1. Every dwelling unit, shall have a kitchen room or kitchenette equipped with the following:
 - a. **Kitchen Sink** - an approved kitchen sink, properly connected to both hot and cold running water lines, under pressure, and maintained in working order.
 - b. **Stove** - a stove (gas or electric), properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended. Installation of overhead fans is required over the cooking area. (Stoves may not be required in some efficiency size apartments when approved by the Director.)
 - c. **Refrigerator** - a refrigerator, properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended.
 - d. **Work Space & Utilities** - if tenants are required to furnish their own appliances, the landlord shall furnish sufficient space and all required electrical connections, properly installed, to facilitate the use of said appliances.
2. Every room in which meals are prepared in a dwelling unit shall have a sink that is installed in a counter having a backsplash and a drain board made of material impervious to water. The sink shall be connected to an adequate supply of potable running hot and cold water and be connected to the drainage system of the dwelling unit.
3. Sinks and faucets must meet minimum applicable standards. Sink and backsplash shall be water and grease resistant. P-traps and other drain components under the sink shall be metal and or PVC material.
4. Every dwelling unit in which meals are prepared shall have a work surface of at least 8 square feet, which shall be impervious to grease and water.
5. All counter tops showing evidence of wear, water damage, uplifting of surface material, etc. must be replaced. Replacement counter tops may include prefabricated laminated counter tops when walls are sufficiently square. When walls are not square and constructed of plaster materials, counter tops must be built in place, using acceptable materials and designed appropriately for functional use. Granite may be used when cost is not substantially greater than other commonly used materials.
6. Every reasonable effort shall be made to provide cabinets, cupboards or pantry for the storage of food, dishes, and cooking utensils.
7. When a cabinet's level of wear makes it unsanitary or nonfunctional, it shall be replaced.
8. Stove shall be either gas or electric and oven shall be clean and provided with shelves. Installation of overhead fans may require installation of a cabinet for attachment of the fan.
9. Each kitchen in a dwelling unit shall have an approved, connected and operating gas or electrical supply for cooking and refrigeration appliances.

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10. GFCI (ground fault circuit interrupter) outlet receptacles will be required on all counter tops within 6'-0" of sink areas.
11. Minimum lighting in kitchens will consist of 1 lighting fixture in the kitchen cooking area and one lighting fixture in an adjoining eating/dining area.
12. Every reasonable effort shall be made to provide space in the kitchen sufficient to accommodate a refrigerator/freezer having a minimum capacity of at least 18 cubic feet (refrigerator) and 4 cubic feet (freezer) without impeding accessibility to other areas of the kitchen.

BATHROOM FACILITIES

1. Every dwelling unit shall contain a bathroom equipped with the following items:
 - a. **A toilet** equipped with adequate running water connected to the water supply. The toilet shall be clean, secure, free of defects, with a secure seat, and the bowl shall fill at a reasonable rate. Toilet needs to be connected only to a cold water supply. No toilet or urinal shall be located within a habitable room.
 - b. **A wash basin/sink** that shall be located in or adjacent to every room that contains a toilet or urinal. Fixtures shall be connected with an adequate supply of potable, hot and cold running water and must have hot and cold water knobs and must be in good functioning condition. The sink must have a proper drain with P-trap and be vented to the outside. A water resistant back splash shall be provided of a minimum height of 4" that is sealed around the edges with bathroom grade silicone sealant.
 - c. **A bathtub/shower** may be in the same room as the toilet and lavatory or in a separate room. The bathtub shall be of a reasonable design so as not to give rise to a slipping hazard to those who use the shower. Bathtub and shower walls shall be covered to a height sufficient to protect the walls from water penetration. Bathtub shall be fitted securely and there shall be no leaks. All shower bases shall be adequately sealed and a curtain rod or door shall be provided of a sufficient standard to prevent water damage to the floor.
 - d. **A toilet roll holder & towel bar** shall be provided within 12" of toilet or tub.
 - e. **Medicine cabinet & mirror** Medicine cabinets that will limit access by children and a minimum 2'x2' mirror are required in all full baths.
 - f. **Light fittings** shall be of a sealed type appropriate for bathrooms.
 - g. **Ventilation** shall be provided.
2. Every toilet and every bath shall be contained in a room or within separate rooms, which affords privacy to a person within said room or rooms.
3. All bathrooms and toilet rooms shall be located within an area accessible from within the building.
4. Every communal bath shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities, without going through a dwelling unit of another occupant and without going outside of the dwelling.
5. Toilets and bathrooms shall have doors with a privacy-type lock and such doors, locks and hardware shall be operable.

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6. When there is decaying ceramic or plastic tile in bath or shower areas, the deteriorated area must be removed. Water proof sheetrock must be installed, and old or new tile reinstalled, grouted, and caulked. Backsplashes above sinks may also be required depending on the condition and layout of sinks and other plumbing.

PLUMBING

1. Every dwelling unit shall contain a minimum number and type of working plumbing fixtures, consisting of a water closet, a hand wash basin, and a bathtub or shower.
2. Every supplied facility, piece of equipment, or utility which is required under this section, shall be constructed or installed in safe, sanitary working condition, free from leaks, defects and obstructions.
3. Potable water supply piping, water discharge outlets, backflow prevention devices or similar equipment shall not be so located as to make possible their submergence in any contaminated or polluted liquid or substance.
4. Every dwelling and every building shall be provided with piping for hot and cold water connected to every kitchen fixture, every washbasin, bathtub, shower, sink and laundry area; and piping for cold water connected to every toilet and hose bib.
5. Water taps shall be free of defects with no leaks or drips and in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems. Traditional screw machine head taps should be avoided. The type of water tap to be fitted should have a ceramic disc washer and should be quarter turn or lever operated.
6. Every dwelling shall be connected to adequate water-heating facilities which are properly connected to any required hot water lines; and capable of heating water to be drawn for every bath, as well as general usage.
7. Hot water storage associated with water heating facilities shall be not less than the following minimum capacities:
 - a. One (1) dwelling unit - 30 gallons
 - b. Two (2) dwelling units - 40 gallons
 - c. Three (3) or more dwelling units and rooming houses - 50 gallons or more
 - d. or the property must contain appropriately sized boilers.
8. No water heaters shall be allowed in sleeping rooms, bathrooms or closets, unless closet is dedicated for the purpose of housing plumbing and mechanical equipment. Water heaters in a utility room are acceptable. All water heaters shall be properly vented and sealed and shall be equipped with a pressure relief valve and drip leg.

VENTILATION

1. Every bathroom, toilet room, and kitchen shall comply with the light and ventilation requirements for habitable rooms contained above, except that no window shall be required in adequately ventilated bathrooms, toilet rooms or kitchens equipped with a ventilation system installed and located to ensure its proper operation.
2. Every habitable room shall have at least 1 window or skylight which can easily be opened, or be equipped with such other acceptable device to adequately ventilate the room.

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3. All bedrooms must have an egress window in addition to the door. Egress windows must be no more than 44" from the floor and permit at least 5.7 square feet of egress area. Windows must be operable, have locking mechanisms, and provide for ventilation. If there are living accommodations in a basement, an egress window is required.
4. All bathrooms must have an operational window, a functional electric vent fan, or other acceptable method of ventilation.
5. Ceiling fans installed in general living areas shall be Energy Star rated and installed to manufacturer's requirements.

ELECTRICAL & LIGHTING

1. The capacity of the system of circuits and electrical outlets within a building shall be adequate for the intended use of all rooms, and adequate electrical outlets shall be installed to prevent the need for extension cords or other extensions being used as a permanent wiring system.
2. Every habitable room within such dwelling shall contain at a minimum, 2 separate and remote wall type electric convenience outlets.
3. Habitable rooms over 120 square feet, shall contain, at a minimum, 3 separate and remote wall type electric convenience outlets. All newly installed outlets shall be grounded type outlets.
4. Temporary wiring or extension cords shall not be used as permanent wiring.
5. All receptacles in the kitchen, bathroom and lavatory, must be GFCI type (Ground Fault Circuit Interrupter) outlets and must be provided within 6'-0" from any sink or lavatory.
6. Receptacle convenience outlets installed on the exterior of the structure or on open porches, breezeways, garages, utility rooms, etc. shall be of the GFCI type. All electric lighting fixtures installed on the exterior shall be of the type approved for exterior use.
7. All heavy duty appliances, i.e., window air conditioners, freezers, refrigerators, electric stoves, washers, electric dryers, microwaves, etc., shall be supplied with their own dedicated outlet(s) on separate circuits, as applicable.
8. Outlets are required to permit coverage of the entire room by an appliance with a 6 foot cord. Use of extension cords is discouraged and additional outlets should be provided whenever possible to avoid their use.
9. Every habitable room shall have at least 1 ceiling or wall type electric light fixture, controlled by a wall switch, or a wall type grounded electric convenience outlet controlled by a remote switch preferably in the interior of the room next to the entrance.
10. Every toilet room, bathroom, laundry, furnace room, and hallway (where applicable) shall contain at least 1 supplied ceiling or wall type electric light fixture, controlled by a wall switch, and at least 1 wall type grounded electric convenience outlet. Wall type convenience outlets used in bathrooms and kitchens shall be the GFCI type.
11. Light switches in an open staircase, must be double switched at the top and bottom of the stairs. Living quarters should be electrically switched at entrances, unless impractical.

12. Exterior lighting at the front and back doors must be provided. These lights must be weather proof and switched from the interior at the entrance. All old pendant type lighting fixtures shall be removed and replaced with properly installed non-pendant type fixtures
13. All broken and/or missing switch plates and/or receptacle plates shall be replaced.
14. All outlets and fixtures shall be properly installed and connected to the source of electric power in a proper manner
15. If a unit does not have a central air-conditioning system and central air will not be installed, at a minimum a proper grounded outlet shall be installed under 1 window in each habitable room to allow the occupant(s) to install window air conditioning units.
16. Unit specific lights switched from the outside generally do not need to be moved, unless rewiring to be conducted in the house.

HEATING & AIR CONDITIONING FACILITIES

1. Each dwelling unit supplied with its own heating & air condition system, that system is to be properly installed, in safe and good working condition, and be capable of adequately heating and cooling all habitable rooms, bathrooms, and toilet rooms contained therein to a temperature of at least 72°F measured at a distance of 36" above floor level under ordinary winter and summer conditions. Heating & air conditioning system must be adequate for healthful and comfortable living conditions.
2. All existing heating systems, including but not limited to, chimneys and flues, cut-off valves and switches, limit controls, heat exchangers, burners, combustion and ventilation air, relief valves, drip legs and air, hot water, or steam delivery components (ducts, piping, etc.) that are not being replaced, shall be inspected by certified professionals to be in a safe and proper functioning condition at the time of inspection, by means of written project file documentation.
3. Any dwelling unit having as its only source of heat, space heaters or floor furnaces shall have such units removed and replaced with a proper central heating system.
4. Air conditioning equipment shall be installed in accordance with the manufacturer's specifications.
5. Every central heating & air condition unit shall be located and installed with the following:
 - a. Every heat duct, steam pipe and hot water pipe shall be free of leaks and shall function such that an adequate amount of heat is delivered where intended and in such a manner so as to afford protection against involvement of egress facilities or egress routes in the event of uncontrolled fires in the structure;
 - b. No fuel-burning furnace shall be located in any sleeping room or bathroom unless provided with adequate ducting for air supply from the exterior, and, the combustion chamber for such heating unit shall be sealed from the room in an airtight manner.
 - c. Every fuel burning heating unit or water heater shall be effectively vented in a safe manner to a chimney or duct leading to the exterior of the building. The chimney duct and vents shall be of such a design as to assure proper draft, and shall be adequately supported.
 - d. Every steam or hot water boiler and every water heater shall be protected against overheating by appropriate temperature and pressure limit controls.

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- e. A thermostat that controls both heating and cooling should be located near the return air grill.
6. A/C condenser units that will be replaced shall meet the minimum 14 SEER rating. All units shall be installed in a non-obstructed area, level and be well supported on a level surface.
7. The condenser unit's refrigerant line (larger line) must be insulated and have secured wiring and connections. An electric disconnect switch shall be installed for maintenance and repairs.

SMOKE DETECTORS

1. All residential structures shall have U.L. approved "hard wired" smoke detectors or battery operated smoke detectors, properly installed in all bedrooms and in area adjacent to bedrooms in accordance with manufacturer's instructions.
2. When more than one smoke alarm is required in an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit.
3. All smoke detectors shall be operable. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

ENERGY CONSERVATION

All structures shall comply with certain energy conservation measures (U.S. Department of Energy recommendations). These measures include, but are not necessarily limited to, the following:

1. Installation of insulation or the installation of additional insulation, especially in the attic/ceiling areas. The recommended level for ceiling insulation is to a resistance factor of R-30, wherever possible.
2. When siding is being replaced and/or interior wall finishes of exterior walls are being replaced on a dwelling, such exterior walls are to be provided with insulation and at the recommended resistance factor (r-value) of R-11, or that which is allowed by the stud cavity space. In addition, an air infiltration barrier, such as Tyvek or approved equal, shall be installed on all exterior walls. If new walls are being framed and insulated, the minimum R factor is R-19 or R-13 plus R-5 foam. The installation of fan-fold foam or foam sheathing may be added to increase household R-ratings.
3. The installation of weather stripping at all exterior doors, windows, ground-entry basement doors, etc. is required. Doors, when replaced, shall be Energy Star rated. Door jams will be sealed and thresholds will be caulked.
4. Provide caulking around exterior doors and windows, at the foundation/sill plate union, and at other air-infiltration areas.
5. All heat ducts and hot water or steam heat distribution piping shall be insulated or otherwise protected from heat loss where such ducts or piping runs are located in unheated spaces. Similarly, distribution piping for general use hot water shall also be protected from heat loss where such piping is located in unheated spaces. All water distribution piping shall be protected from freezing.
6. Replacement of single pane window units with thermal units or, the installation of combination storm windows if the single window units will not be replaced.

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7. Any attic access passage ways in individual units should be addressed accordingly so as not to significantly reduce the efficiencies created by the other energy conservation measures being undertaken.

ADDITIONAL REQUIREMENTS

APARTMENT UNIT & BUILDING AND PARKING TABULATION

The construction drawings shall include an Apartment Unit Tabulation that summarizes the building square footage for all types of apartment units and common areas. This would include the total number of living units per floor; unit descriptions (1 bedroom/1 bath, etc.) and total square footage of each unit. Parking space tabulation shall include handicap spaces.

GENERAL NOTES

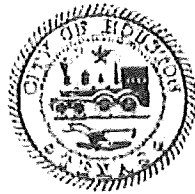
A statement shall be included in the general notes section of the drawings stating that all design and proposed renovation work for the project is in compliance with all applicable requirements for the project.

REHAB/RENOVATION DRAWINGS

All project designs and drawings for work requiring permits are to be performed by certified professionals. The type of work being performed will dictate the types of drawings that will be required. Please contact the City of Houston Planning Department or other certified professionals for details related to your individual project. One set of approved drawings shall be submitted to COH Housing & Community Development Department prior to the start of project and 1 set of "as-built" drawings at the end of the project.

Regardless of the types of drawings required, the following items are to be included in the set of working drawings:

1. A layout drawing of the entire apartment property, including all apartment buildings/units, common areas, laundry facilities, boiler rooms, access entryways, parking areas, wheel chair ramps, parking spaces, etc.;
1. The location(s) and nature of rehab work that will be performed;
3. Apartment Unit Tabulation that summarizes the building square footage for all types of apartment units and common areas. This would include the total number of living units per floor; unit descriptions (1 bedroom/1 bath, etc.) and total square footage of each unit. See attachment 1 for a sample template.
4. Parking Space Tabulation showing the total number of parking spaces, including those spaces designated for handicap parking.
5. All ADA living units on the property, specifying those for individuals with mobility impairments and individuals with sensory impairments.



City of Houston Housing and Community Development Department Minimum Property Standard for Affordability Maintenance for Multifamily Rental Housing

OVERVIEW

The standards contained in this document establish the minimum property habitability (MPS) standard for Affordability Maintenance for the City of Houston's Multifamily Rental Housing Program that receives assistance through federal funding from U.S. Department of Housing and Urban Development (HUD).

APPLICABILITY

This minimum standard applies to multifamily rental housing units that currently receive federal assistance or were acquired/developed/rehabilitated using federal assistance.

PURPOSE

This document serves as the minimum standard for City of Houston multifamily rental housing. As a result, the property must be free of those foreseeable hazards and adverse conditions that may affect the life, health, and safety of the occupants, fire safety, and the structural soundness of the dwelling or which may impair the customary use of the property. In addition to these standards all units must comply with the following:

- COH Building Code and Code of Ordinances
- The International Building Code (IBC) 2006 adopted by the City of Houston or the latest adopted edition of the IBC and any applicable code required by the pertaining Municipality.
- The International Residential Code (IRC) 2000 adopted by the City of Houston or the latest adopted edition of the IRC and any applicable code required by the pertaining Municipality.
- The International Energy Conservation Code (IECC) 2006 adopted by the City of Houston or the latest adopted edition of the Model Energy Code (MEC) and any applicable code required by the pertaining Municipality.
- The Lead Based Paint regulations as described in 24 CFR, Part 35 for units built before 1978.
- HUD 24 C.F.R Part 200.925a-c/296 Rules for Multifamily and Care-Type Housing

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- HUD C.F.R Part 8 Section 504 of the Rehabilitation Act of 1973, ADA, UFAS, FHA, and TAS where applicable.
- The requirements from other governing entities such as Homeowners Associations and Local and Federal regulations pertaining to zoning, traffic, drainage, flood plains and fire prevention (NFPA)

MINIMUM STANDARDS FOR EXTERIOR PROPERTY

TREES, BUSHES & LAWN

1. All lawns and any other part of a property shall be kept clean and free from accumulations of junk, rubbish, brush, refuse, litter, garbage and other debris, and any conditions that are health, fire or other hazards.
2. All lawns shall be provided with suitable ground cover to prevent instability and erosion of the soil. Holes or depressions of more than 6" in diameter should be filled to correct drainage problems and remove safety hazards.
3. All lawns, shrubs, hedges, trees and plants shall be planted and maintained in a manner that does not:
 - a. obstruct the safety of the public;
 - b. affect the safety of vehicular or pedestrian traffic;
 - c. constitute an obstruction of view for vehicular traffic;
 - d. wholly or partially conceal or interfere with the use of any hydrant or water valves;
 - e. overhangs or encroach upon any pavement, sidewalk or travelled portion of any street or highway.
4. Trees or parts thereof that are dead, diseased, decayed or damaged, shall be removed or maintained in a condition that is not hazardous to persons expected to be on or about the property.
5. Trees that present a safety hazard because electrical wiring running through them must be trimmed. Trees that could damage the structural integrity of an adjoining building above or below the foundation shall be removed.
6. HVAC condenser units and electrical panels shall be free of shrubs, hedges, weeds, trees and plants that interfere with its operation and access for repairs and maintenance.

GARBAGE & DEBRIS

1. Property shall be kept free of garbage, rubbish, debris or accumulations of such materials that prevent access to or exit from the property in the case of emergency or other safety or health hazard.
2. Every apartment project shall be provided with sufficient trash receptacles to contain all garbage, debris or rubbish which accumulates on the property, and such materials shall be placed for collection in proper receptacles in compliance with applicable local ordinances, and not allowed to accumulate in a manner that would present a life, health and safety issue.
3. Trash receptacles shall be containers that are water-tight, equipped with a tight-fitting cover, rodent-and pest-proof, and shall be maintained in a clean condition without holes or spillage; and closed, or emptied, rinsed and cleaned when not in use, to prevent the escape of offensive odor or debris.
4. Where commercial or on site garbage containers are visible from a public street or land, or the property abuts residential properties, the area where the receptacles are stored shall be enclosed on all sides by wall or solid fence not less than 6' high. Such wall or fence shall contain an adequate door or gate to allow for the removal of garbage or refuse. They shall be

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maintained in a manner that will not attract pests, create a health or other hazard, or obstruct an emergency route, recreation facility, parking area, driveway or walkway.

5. Every unenclosed porch, balcony, and every exterior or interior hallway, stairway and common area shall be kept free of garbage, debris, furniture or appliances, except furniture which is outdoor grade or made weather and water resistant may be placed for use on balconies or porches.
6. Bulk trash, including refrigerators, stoves, washers, dryers and other appliances; unlicensed automobiles and other vehicles; and improperly stored construction materials or firewood should be removed or appropriately stacked as prescribed by City of Houston ordinances.

GRADING & DRAINAGE OF PROPERTY

1. Property shall be graded and maintained so no stagnant water will accumulate or stand on the premises, or within or around any building or structure located on the premises or create unstable soil conditions or erosion.
2. Ground areas around buildings shall be sloped away from walls to eliminate low areas where standing water may collect.
3. All catch basins, storm drains, ditches and swales shall be maintained free from defects and obstructions.
4. Condensation from air conditioners shall not be permitted to discharge onto the exterior wall of a building, pedestrian walkways, sidewalk or street.

STORM GUTTERS & SPLASH BLOCKS

1. Gutters and downspouts shall be maintained watertight and free from leaks, in good working order, and free from any obstructions and hazards, and in a stable condition and shall be securely fastened to the structure.
2. Any above-ground discharge from a downpipe or pipe shall be directed to discharge and be contained on the property in a manner that is not likely to cause damage to any adjoining property or create a hazardous condition on any stairway, walkway, street or boulevard.
3. Gutters and downspouts shall be protected by a suitable finishing material. Deteriorated gutters that impede drainage or cause a safety hazard shall be reinstalled.

PEST CONTROL

The entire property shall at all times be kept free of rodents, vermin, insects and other pests and from conditions which may encourage infestation by pests.

FENCE MAINTENANCE

1. All fences and other enclosures around or on a property shall be maintained in a structurally sound condition and plumb, unless specifically designed to be other than vertical, with a uniform construction, in good repair and free from hazards.

2. Fences, barriers, retaining walls shall be kept free of posters and graffiti and shall be maintained in compliance with all City of Houston ordinances. Any part of a fence or enclosure that creates an illegal entry and access ways has to be repaired immediately.

VACANT BUILDINGS

1. The owner shall protect vacant or unoccupied buildings against the risk of fire, accident or intentional damage to the property, or such damage as may be caused to other properties, arising from the entry of unauthorized persons to the building, by effectively preventing entrance by unauthorized persons.
2. The owner shall protect buildings damaged by accident, storm, neglect or other causes or intentional damage, against further risk of further damage, accident or other danger, and shall effectively prevent entrance thereto by all unauthorized persons, by closing and securing opening(s) to the building(s) with boarding which completely covers the opening.
3. Any structure that is in a state of disrepair or collapse must be repaired or demolished, and any collection of building materials must be removed from the property. Such demolition does not reduce the number of units restricted under Loan Agreements.

NON-DWELLING STRUCTURES

1. Every accessory building shall be maintained with suitable and uniform materials, kept in good repair, free from hazards, and protected by paint, preservatives or other weather-resistant material.
2. All laundry rooms, recreation rooms and any other ancillary rooms, and the facilities, amenities and associated equipment for those rooms, shall be kept clean and maintained in a safe condition and in good repair.
3. All laundry rooms shall be provided with hot and cold running water and properly connected to the drainage system.
4. All laundry rooms shall have a trapped floor drain connected to the drainage system and capable of adequately draining the floor.

STEPS, SIDEWALKS, DRIVEWAYS, PARKING LOTS & PAVING

1. The surfaces of steps, sidewalks & driveways and similar areas of the yard shall be maintained in good repair so as to afford safe passage under normal use.
2. All sidewalks, service walks driveways & patios shall be kept in a state of maintenance and repair, free from obstructions, defects, uneven joints, tripping hazards, etc.
3. All areas used for vehicular traffic or the parking or storage of a vehicle shall be paved with asphalt or concrete or other environmentally safe and dust-free equivalent surface and shall be kept free from dirt, surface dust and refuse; maintained in good repair and free from cracks, holes and ruts.
4. Parking lots are to be properly maintained in a way to prevent ponding of water and to direct the flow of water away from the walls of all buildings.

5. Parking lots are to be provided with suitable markings to indicate parking spaces, and the markings shall be maintained so as to be clearly visible. Signs, decals, pavement markings should be clear, visible and distinctive.
6. Parking stops shall be installed where parking spaces are adjacent to a property line to protect fences and neighboring properties from physical damage and shall be properly anchored and secured and properly aligned and positioned to each parking space.
7. Handicap parking areas shall be maintained so that individuals with disabilities can approach, enter, and exit the areas easily.

MISCELLANEOUS

1. The water in swimming pools shall be kept clean and in a sanitary condition free from obnoxious odors and conditions likely to create a breeding environment for insects. Surrounding surface areas for walking and relaxing shall be kept clean of dirt, mold, mildew, etc.
2. Property and building signs and faces shall be maintained without any visible deterioration of the sign or its structure so that the information conveyed by the sign by color, form, graphic, illumination, symbol or writing is clearly legible.
3. Property and building signs and any fastening/supporting structures that are damaged, broken or excessively weathered or faded, or that have a worn, peeled or cracked finish, shall be removed or refinished and put in a good state of repair so that the signs are free from defects or faded lettering.
4. Every dwelling unit shall have a separate and secure mail box or mail receptacle that is maintained in good condition at all times. Identification information on the mail box should be clearly visible.
5. All antennas, satellite dishes, lightning rods and other similar structures and their supporting members shall be maintained in a safe condition and in good repair.
6. Elevators shall be maintained in a clean condition and certified to be in good working order.
7. All elevator parts and appendages, including lighting fixtures, lamps, elevator buttons, floor indicators and ventilation fans, shall be kept in good repair and operational.
8. Coolant lines of HVAC condenser units shall be insulated to insure optimum performance. Insulation shall not be torn or worn out and shall be tightly secured to the gas line.

BUILDING STRUCTURE

1. Every building structure on the property shall be maintained in structurally sound and safe condition.
2. Every part of a building or structure shall be maintained in good repair and in a structurally sound condition so as:
 - a. To be capable of safely sustaining its own weight and any load to which, normally, it might be subjected;
 - b. To be capable of safely accommodating all nominal structural movements without damage, decay or deterioration; and
 - c. To prevent the entry of moisture that would contribute to damage, decay or deterioration.

FOUNDATION

1. The foundation walls and floors shall be maintained in good repair and structurally sound.
2. Foundation walls and crawl spaces and other supporting members of a building or structure shall be stable and not sinking and maintained in good repair and structurally sound.
3. Foundation cracks should be identified, particularly at window areas. All cracks must be filled with epoxy, cement, and rubbed with appropriate cement materials. All cracks exceeding ¼" wide must be investigated by a certified professional to determine the extent of repair work.
4. Areas of the foundation that are spalling (crumbling gravel or rock), have decaying concrete, have collapsed, or are in any other state of disrepair must be addressed to prevent further deterioration or damage to the buildings.
5. Collapsed sections of foundations must be reconstructed as per the written recommendation of a certified professional.
6. Exposed foundation rebar should be cleaned and prepared and surface area patched thoroughly to avoid water penetration.

EXTERIOR WALL SURFACES

1. All exterior surfaces of buildings, structures, fences and retaining walls, including mobile structures and buildings shall be maintained and kept weather resistant so as to prevent their deterioration and entry of vermin and birds. Surfaces shall be free of dirt, mold, mildew, algae and water stains.
2. Exterior walls shall contain no holes or cavities, separation of siding materials, collapse of siding or deterioration of exterior siding materials or openings at the rafters and at the rim joist.
3. All exterior surfaces of buildings, structures, fences and retaining walls, including mobile structures and buildings, shall be repaired by the painting, restoring or repairing of the walls, coping or flashing or by the waterproofing of the joints and of the walls itself.
4. Markings, stains, graffiti, painted slogans, smoke damage or other markings or defacement appearing on any exterior surface shall be removed. If necessary, to maintain the exterior surface, the surface of these areas shall be restored and, resurfaced to the exterior finish of the building or structure.
5. All canopies, marquees, signs, awnings, screens, grilles, stairways, pipes, ducts, standpipes, air conditioners and all similar equipment, attachments and their supporting members shall be maintained in good repair, properly anchored and protected from the elements, so as to prevent decay and rust, by paint or other protective coating.

WINDOWS & EXTERIOR DOORS

1. Windows, skylights, exterior doors and frames and attic access doors shall be maintained in good repair and shall be of such construction so as to minimize drafts and heat losses through the infiltration of outside cold air.

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2. All exterior openings for doors and windows shall be fitted with doors or windows that are maintained in a weather-tight condition to prevent drafts or leakage and protected by suitable materials to prevent the entry of rodents, vermin and insects.
3. Rotted or damaged doors, door frames, window frames, sashes and casings, weather-stripping, caulking, broken glass and missing or defective door and window hardware shall be repaired or replaced.
4. All exterior doors and the entrance door to a dwelling unit shall have hardware so as to be capable of being locked from the outside, and locked or otherwise secured from the interior of the space.
5. All windows in a dwelling unit that are capable of being opened shall be fitted and equipped with screens that are maintained in good repair and free from defects and missing components.
6. All exterior doors and windows capable of being opened shall be free from defective hardware and be capable of being locked or otherwise secured from inside the building.
7. Glazed doors, windows and other transparent surfaces shall be kept reasonably clean in order to permit unimpeded visibility and unrestricted passage.
8. Doors, passageways and exits shall be maintained free from hazardous conditions, obstructions and impediments.

STAIRWAYS, BALCONY'S & HALLWAYS

1. Interior and exterior stairs, landings, balconies, porches and any other means of access shall be maintained so as to be free of holes, cracks and other defects which may constitute possible accident hazards. Treads or risers that show excessive wear or are broken, warped or loose and all supporting structural members that are rotted, rusted or deteriorated shall be repaired or replaced. Treads that have become loose need to be securely anchored to stairwell.
- 2.
3. Handrails shall be installed and maintained in good repair on all exterior stairs which have more than 3 risers and on all interior stairs within dwelling units which have more than 2 risers.
4. Handrails on porches, balconies or raised floor surfaces shall be securely anchored to the floor and/or to the nearest exterior wall so as to not allow any horizontal movement of the handrail.
5. Wood balconies and walkways need to be maintained in good repair and in a structurally sound condition. Structural components that have deteriorated, rotted or are in disrepair shall be replaced to maintain the structural integrity.

ROOF COVERING

1. All structural components of a roof shall provide adequate support for all designed loads, and form a suitable base for the roof covering. If the roof is subjected to a load for which it may not be adequate, the roof shall be cleared of the load to prevent collapse or structural damage.

2. A building roof, including the fascia board, soffit, cornice and flashing around the perimeter of a roof, should be inspected for deterioration and be maintained in a weather-tight condition and able to prevent the leakage of water into the building.
3. On structures over 50 years of age, the truss and support system of roofs must be inspected to ensure adequate construction. When deficiencies are identified, appropriate supports and truss systems must be reconstructed.

PLUMBING

1. The plumbing system in every building shall be maintained in good working order and free from leaks and defects.
2. All water pipes and appurtenances thereto shall be protected from freezing.
3. All clean-out drains shall be enclosed with insert covers that contain no holes.
4. Any sanitary sewage discharged from buildings on the property constitutes a life, health and safety danger to the residents and needs to immediately be repaired.

ELECTRICAL & EXTERIOR LIGHTING

1. The capacity of the electrical connection to a building and the system of circuits and electrical outlets distributing the electrical supply within the building shall be maintained at all times and free from unsafe conditions.
2. Electrical panel boxes must have cover plates and covers for all unused breakers.
3. Every stairway, exterior exit and entrance doorway, bathroom, toilet room, kitchen, hallways, laundry, furnace room and non-habitable work room in a suite, dwelling unit or building shall have a permanently installed lighting fixture that shall be maintained in good working order to provide safe passage.
4. Exterior flood lighting shall be maintained in a good state of repair without any damage to light fixture and its components. Wires shall be properly enclosed to avoid contact with water.
5. Outdoor receptacles must be maintained to be impervious to water intrusion and in a condition that permits easy access and not interfere with lawn maintenance.
6. All exterior electrical wires shall be enclosed in conduit. Conduit that is cracked, broken or is deteriorated shall be replaced.

MINIMUM STANDARDS FOR INTERIOR PROPERTY

WALLS, FLOORS, CEILINGS, DOORS & WINDOWS

1. Floors and floor coverings shall be maintained free from any trip or other hazardous condition and shall be kept in a clean and sanitary condition and free from holes, stains, rubbish and debris.
2. Any repair, replacement or painting required on walls & ceilings shall be such that the material used shall have a finish and facing similar to that of the original covering.
3. Floors of rooms in which plumbing fixtures are installed shall be maintained to be reasonably impervious to water and in a condition that permits easy cleaning.
4. Every wall and ceiling shall be maintained clean and free of holes, cracks and damaged and deteriorated surface material, and each repair shall be finished to reasonably match the existing walls or ceilings.
5. Previously finished walls and other surfaces in public areas of property shall be maintained in good repair and shall be renewed or refinished, when necessary, to maintain a similar appearance.
6. In bathrooms, water proof green rock, blue rock or other similar drywall material must be utilized. Interior walls with decayed sheetrock must be replaced by installing new sheetrock, taping cracks, texturing and repainting.
7. Interior doors, their frames, glass panels and hardware shall be maintained in good repair, and all doors shall be of a good fit in their frames.
8. All damaged or deteriorated door trim and baseboard must be removed and replaced.
9. All doors and hatches to the roof that provide access for the purpose of maintenance shall be kept free of obstructions and locked at all times.
10. All cracked or deteriorating ceilings require an inspection to determine the cause that generated the problem. Every effort should be made to correct the problem before the ceiling is repaired. Cracks must be filled and retextured, and the ceiling completely repainted when treated.
11. When there is decaying ceramic or plastic tile in bath or shower areas, the deteriorated area must be replaced with water proof sheetrock and new tile reinstalled, grouted, and caulked.

KITCHEN FACILITIES

1. All counter tops showing evidence of wear and tear, water damage, uplifting of surface material, etc. must be replaced. Replacement counter tops may include prefabricated laminated counter tops when walls are sufficiently square.
2. Sinks and worktops shall be sealed around edges with silicone sealant to be impervious to water and in a condition that permits easy cleaning.
3. All kitchen plumbing must be inspected to ensure that faucets and drain pipes work properly. All waste pipes and traps shall be free of defects with no leaks or drips.

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4. Water taps shall be in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems.
5. Any holes around waste pipes and traps shall be sealed so as to prevent the ingress of vermin and pests.
6. Waste disposal unit shall be maintained in operating condition. Electrical connection wires and drain lines should be properly sealed.
7. The refrigerator/freezer or refrigerator and freezer shall be clean and in good working order.
8. All stove gas rings or burners shall be clean and in operating condition. The oven shall be clean and properly working.
9. Kitchen cabinets must have properly functioning doors and/or drawers. Cabinet doors must be in good condition and properly open and close.

BATHROOM FACILITIES

1. The toilet shall be clean, secure, and free of defects, with a secure seat and the tank shall fill at a reasonable rate. All bathroom flooring must be inspected at the base of the toilets to ensure that leaking is not occurring. When leaking has occurred and sub floor has rotted, the sub floor must be removed and replaced.
2. Bathtub or shower and washbasin shall be in good condition and should show no signs of surface build-up, cracks or chips. They shall be sealed around the edges to prevent water intrusion.
3. Waste pipes and taps shall be free of defects with no leaks or drips.
4. Water taps shall be in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems.

BEDROOM & LIVING ROOM REQUIREMENTS

1. All bedrooms must have a functional door that closes, which, preferably can be locked from the inside.
2. All switchable light fixtures and electrical outlets in the bedrooms shall be operating condition.

ELECTRICAL

1. The capacity of the system of circuits and electrical outlets within a building shall be adequate for the intended use of all rooms, and adequate electrical outlets shall be installed to prevent the need for extension cords or other extensions being used as a permanent wiring system.
2. All electrical fixtures, switches, receptacles and connections to them shall be maintained in a safe and complete condition and in good working order.
3. All electrical connections must be in enclosed metal or plastic electrical boxes. No hanging wires are permitted.

4. All light fixtures should be inspected to ensure that they are solidly hung and that the electrical connections have not been loosened. All electrical fixtures that evidence wear must be replaced with new fixtures.
5. All electrical outlets and switches must have tight cover plates. Any switches or outlets that are nonfunctional must be inspected by a certified professional to correct.
6. Smoke detectors must be fully operational and shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Installation of smoke alarms should be in accordance with the recommendations of the manufacturer. Unacceptable smoke detectors must be removed, properly reinstalled in an acceptable location, and all affected wall or ceiling areas repaired to match surrounding.

MISCELLANEOUS

1. The heating and cooling system and all associated mechanical equipment shall be operated and maintained in good working order, free from unsafe conditions, and in accordance with the requirements of the local building code.
2. All systems of mechanical ventilation shall be maintained in good working order.
3. Every dwelling unit shall be kept free of infestation of pests.
4. Fire extinguishers should be located in the kitchen and be fully loaded and shall be maintained in good working order.
5. Boiler rooms shall be good working condition with drain lines at the temperature and pressure relief valves properly sized and terminated in an acceptable location.

ADDITIONAL REQUIREMENTS BY THE CITY OF HOUSTON

HABITABILITY ORDINANCE 2009-1043

As per the City of Houston's Ordinance 2009-1043 for Habitability Inspections – All apartment communities with 3 or more units (Sec 10-151 of the Houston Code of Ordinances) are required to register with The City of Houston for Habitability Inspection purposes (Habitability Inspection Checklist). To obtain detailed information regarding the program, log on to www.houstonmultifamily.org. For more information, please contact the Habitability Inspections Section at 713-535-7900. See appendix II for Habitability Ordinance 2009-1043.

APARTMENT SECURITY ORDINANCE 2006-1124

As per the City of Houston's Ordinance 2006-1124 for Apartment Security – All apartment communities of ten or more units (Sec 28-282 City of Houston Code of Ordinances) are required to register the ownership of the apartment community with the Multifamily Administrative Unit of the Houston Police Department. To obtain detailed information regarding the program, log on to www.houstonmultifamily.org. For more information, please contact the Habitability Inspections Section at 713-535-7900.

CERTIFICATE OF OCCUPANCY RENEWAL

All properties are required to have a Certificate of Occupancy from the City of Houston Code Enforcement located at 3300 Main Street, Houston, TX 77002.

FIRE INSPECTION

All inspections related to City of Houston Fire Department are coordinated through the City of Houston Habitability Inspection.

Appendix I

APPENDIX 14

PROJECT SUMMARY:

Apartments:

Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath	46	581 s.f.
B1	One Bedroom, 1 Bath	24	620 s.f.
C1	One Bedroom, 1 Bath	131	660 s.f.
C2	One Bedroom, 1 Bath (H.C.)	9	660 s.f.
Total One Bedroom Units		210 Units	130,006 s.f.
D1	Two Bedroom, 1 Bath	41	857 s.f.
D2	Two Bedroom, 1 Bath (H.C.)	3	857 s.f.
E1	Two Bedroom, 2 Bath	63	950 s.f.
E2	Two Bedroom, 2 Bath (H.C.)	5	950 s.f.
F1	Two Bedroom, Den, 2 Bath	2	1,007 s.f.
Total Two Bedroom Units		114 Units	104,332 s.f.
Apartments Total		324 Units	234,328 s.f.
Amenity Center			2,400 s.f.
Leasing Office			1,240 s.f.
Laundry, Boiler, Storage			2,500 s.f.
Project Total			240,468 s.f.

Parking:

Parking Required

210 One Bedroom Units @ 1.333 cars/unit =	279.93 cars
114 Two Bedroom Units @ 1.667 cars/unit =	190.04 cars
Total Required	469.97 cars

Parking Provided

Open Parking (secured)	293 cars
Carport Parking (secured)	150 cars
Total Secured Parking	443 cars
Amenity & Other Parking (non-secured)	27 cars
Total Parking Provided	470 cars

<u>Total Parking Provided:</u>	<u>Van Accessible</u>	<u>HC Accessible</u>	<u>Standard</u>	<u>Total</u>
Open Parking (secured)	6	11	425	442 cars
Amenity Center	1	0	27	28 cars
Total Parking Provided	7	11	452	470 cars

Appendix II

APPENDIX 14

City of Houston, Texas, Ordinance No. 2009-1043

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE HABITABILITY OF MULTI-FAMILY RENTAL BUILDINGS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the 81st Texas Legislature (Regular Session) passed House Bill 1819 ("HB 1819"), which bill became law on June 19, 2009; and

WHEREAS, HB 1819 added Section 214.219 ("Section 214.219") to the Texas Local Government Code; and

WHEREAS, Section 214.219 requires a municipality with a population of 1.7 million or more to "adopt an ordinance to establish minimum habitability standards for multi-family rental buildings, including requiring maintenance of proper operating conditions" and to "establish a program for the inspection of multi-family rental buildings to determine if the buildings meet the minimum required habitability standards"; and

WHEREAS, HB 1819 requires a municipality subject to Section 214.219 to enact the said ordinance and to establish the said program not later than December 31, 2010; and

WHEREAS, the City is a municipality subject to Section 214.219; and

WHEREAS, the City Council finds that Article V and Divisions 3 and 4 of Article IX of Chapter 10 of the Code of Ordinances, City of Houston, Texas (the "Code of Ordinances") constitute habitability standards for multi-family rental buildings, which standards should be supplemented and strengthened as provided herein; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as a part of this Ordinance.

Section 2. That Chapter 10 of the Code of Ordinances, Houston, Texas, is amended by adding a new Article IV that reads as follows:

"ARTICLE IV. HOUSTON MULTI-FAMILY HABITABILITY CODE

Sec. 10-151. Title; purpose; conflict with other municipal laws.

This article is, and may be cited as, the 'Houston Multi-Family Habitability Code.' One purpose of this Habitability Code is to comply with Section 214.219 of the Texas Local Government Code. The provisions of this Habitability Code are cumulative of all other laws and regulations of the city, as well as all applicable state and federal laws and regulations. In the event of a conflict between this Habitability Code and another law or regulation of the city, the provisions of this Habitability Code shall control.

Sec. 10-152. Definitions.

In addition to definitions appearing elsewhere in this article, the following words and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means the building official and all persons designated in writing by the building official to act on his or her behalf to construe and to enforce this article.

Habitability refers to the character of a multi-family rental building free of any condition constituting a material risk to the physical safety or health of the building's ordinary tenants. A multi-family rental building substantially free of such conditions is *habitable*.

Multi-family rental building or *MFRB* means a building that has three or more units. Only for the purposes of the Inspection Program established by this article, *multi-family rental building* or *MFRB* includes all MFRBs and all accessory buildings (such as a boiler room, laundry room, club house, or garage) on the same tract.

Owner means the current owner (or, collectively, the current owners) of the real property on which a multi-family rental building is located. For the purposes of this article, records available for public view at an official website maintained by the appraisal district in which the MFRB is located are presumed to be accurate with regard to the ownership of real property, but the presumption of ownership may be rebutted by documents properly recorded in the real property records of the county in which the MFRB is located.

Tract means the parcel or parcels of real property on which a

multi-family rental building is located.

Unit means one or more rooms rented for use as a permanent residence under a lease to one or more tenants, except that none of the following shall constitute a *unit*:

- (a) A room or rooms rented primarily for the purpose of receiving services regulated by a department or agency of the federal government or of the State of Texas (including, but not limited to, the Texas Department of State Health Services);
- (b) A room or rooms owned or operated by a public or private college or university accredited by a recognized accrediting agency within the meaning of Section 61.003, Texas Education Code;
- (c) An 'apartment' in a 'condominium' within the meaning of Chapter 81, Texas Property Code; or
- (d) A 'unit' in a 'condominium' within the meaning of Chapter 82, Texas Property Code.

Sec. 10-153. Construction of this Habitability Code.

This article shall not be construed to alter the terms of any lease or other agreement between an owner and a tenant relating to an MFRB, except that no provision of any such lease or other agreement shall be construed to excuse compliance with this article or with any other law or regulation of the city. It is not the purpose of this article to prescribe legal rights or liabilities as between an owner and a tenant.

Sec. 10-154. MFRB Registration.

- (a) The building official shall promulgate a form for the registration of MFRBs, which form shall require disclosure of:
 - (1) The physical address of the MFRB;
 - (2) The account number(s) assigned to the tract by the appraisal district in which the MFRB is located;
 - (3) The number of buildings on the tract;
 - (4) The number of units in each building on the tract;

- (5) A brief description of the intended use of each building on the tract (residential building, boiler room, laundry room, club house, garage, etc.);
- (6) The Project Number(s) appearing on the face of either the Certificate of Occupancy or the Life Safety Compliance Certificate issued by the city for each building on the tract; and
- (7) The name, mailing address, physical address, telephone number, and e-mail address (if available) of at least one owner of the MFRB.

(b) The form promulgated by the building official shall provide a physical address and a mailing address for filing completed MFRB Registration Forms. In addition, the building official shall establish a means by which MFRB Registration Forms may be completed and filed electronically.

(c) An owner of an MFRB shall register the MFRB by completing and filing an MFRB Registration Form with the building official.

(d) An owner of an MFRB shall post a hard copy of the current, completed MFRB Registration Form in or on the MFRB.

(e) If an MFRB was not in existence on January 1, 2010, the owner of the MFRB shall register the MFRB by completing and filing the MFRB Registration Form with the building official no later than 30 days after the MFRB receives a Certificate of Occupancy.

(f) Registration of an MFRB as required by this section shall constitute:

- (1) Registration of the MFRB under section 28-283 of the Code of Ordinances; and
- (2) Compliance with sections 250.003 and 250.004 of the Texas Local Government Code.

(g) No later than 30 days after an owner of an MFRB knows or reasonably should know that a statement on the MFRB Registration Form was incomplete or inaccurate when filed, or has become incomplete or inaccurate since filed, the owner must complete and file an amended MFRB Registration Form.

Sec. 10-155. Habitability standards.

In addition to the habitability standards established by article V and by divisions 3 and 4 of article IX of chapter 10 of this Code:

- (1) An owner of an MFRB violates this article if the MFRB does not comply with:
 - a. All applicable provisions of the Fire Code;
 - b. Sections L102 through L108 of appendix L of the Building Code (which provisions are part of the Building Code's 'Life Safety Appendix');
 - c. Sections 10-211 through 10-215 of this Code (which provisions pertain to the numbering of buildings);
 - d. Sections 43-18 through 43-20 and section 43-23 of this Code (which provisions pertain to swimming pools); and
 - e. Sections 92.153 through 92.162 of the Texas Property Code (which provisions pertain to security devices).
- (2) An owner of an MFRB at all times must post in or on the MFRB:
 - a. A valid Certificate of Occupancy or a valid Life Safety Compliance Certificate; and
 - b. A 'NOTICE TO ALL RESIDENTS' legibly typed or printed in a font 28 points or larger, in both English and Spanish, the substance of which Notice is as follows: 'IF ANY CONDITION of this building CREATES A HAZARD to human safety or health, REPORT THE CONDITION to the building's manager or owner. You also may report the condition to the City of Houston by calling the City's Service Helpline at 311.'
- (3) Any document required by this article to be posted in or on an MFRB must be posted either (a) as provided by the Building Code or (b) by posting an accurate copy of the document in a manner reasonably protected from weather and in a place conspicuous to ordinary tenants no more than five feet from each mailbox facility at which the United States Postal Service delivers mail to tenants or, if no such facility exists, in some

other place equally conspicuous to ordinary tenants of the MFRB.

Sec. 10-156. Powers and duties of building official.

(a) Except for applicable provisions of the Fire Code incorporated herein by reference, the building official has primary responsibility for the enforcement of this Habitability Code.

(b) With regard to MFRBs only, the terms 'director' and 'neighborhood protection official' as used in article V and in divisions 3 and 4 of article IX of chapter 10 of this Code refer to the building official.

(c) With regard to MFRBs only, the building official has powers and duties equal to and concurrent with the health officer for the enforcement of sections 43-18 through 43-20 and section 43-23 of this Code (which provisions pertain to swimming pools).

Sec. 10-157. MFRB Inspection Program.

(a) The building official shall inspect MFRBs pursuant to an inspection program (the 'Multi-Family Rental Building Inspection Program' or the 'MFRB Inspection Program'), as provided in this section.

(b) The building official shall promulgate a checklist (the 'Multi-Family Rental Building Checklist' or the 'MFRB Checklist') of criteria by which the building official shall determine the habitability of MFRBs.

(1) The MFRB Checklist shall have no force or effect until ninety days after copies of City of Houston Ordinance No. 2009-2009-1043¹ and the MFRB Checklist have been available for public view in the office of the city secretary and at a website maintained by the city.

(2) The building official may amend the MFRB Checklist; however, an amendment of the MFRB Checklist shall have no force or effect until ninety days after the MFRB Checklist has been available for public view in the office of the city secretary and at a website maintained by the city.

(c) No MFRB shall be inspected under the MFRB Inspection Program until at least forty-five days after the building official has mailed to

¹ The City Secretary shall insert the number of this Ordinance

the owner a letter stating:

- (1) The first day of thirty consecutive days during which the building may be inspected under the MFRB Inspection Program;
- (2) The physical address of the office of the city secretary and the internet address of the website at which copies of the MFRB Checklist are available for public view;
- (3) The amount of the fee (the 'MFRB Inspection Fee') to be paid to the city prior to the first day of the said thirty consecutive days during which the building may be inspected; and
- (4) The mailing and physical addresses at which the MFRB Inspection Fee may be paid.

(d) The building official shall mail by first-class mail duplicate originals of the letter required by subsection (c) of this section to the owner of the MFRB at the respective addresses:

- (1) Of the owner, according to MFRB Registration Form filed with the building official, or, if the MFRB has not been registered with the building official, according to records available for public view at an official website maintained by the appraisal district in which the MFRB is located; and
- (2) Of the MFRB.

(e) No inspection of an MFRB under the MFRB Inspection Program shall be delayed solely because the owner did not receive or did not understand a letter prepared and sent as required by subsections (c) and (d) of this section.

(f) Notwithstanding anything to the contrary in this article, no employee of the city inspecting an MFRB under the MFRB Inspection Program shall enter a unit without the written permission of a person who has a legal right to occupy the unit.

Sec. 10-158. Fees.

For the inspection of an MFRB under the MFRB Inspection Program the owner shall pay to the city the MFRB Inspection Fee, which fee shall be in the amount of either \$4.00 per unit or \$100.00 (total), whichever amount is greater, plus an administrative fee in the amount of \$10.00.

Sec. 10-159. Remedies.

An owner who violates, or whose MFRB is in violation of, any provision of this article shall be guilty of a misdemeanor punishable upon conviction by a fine of not less than \$500 nor more than \$2,000. Each violation, and each day that a violation continues, shall constitute and be punishable as a separate offense."

Section 3. That nothing in this Ordinance shall delay or otherwise hamper a timely inspection of a multi-family rental building ("MFRB") by the City in response and relating to credible complaints by tenants or other members of the public, such inspections ("reactive inspections"), although not part of the Multi-Family Residential Building Inspection Program ("MFRB Inspection Program") established by this Ordinance, being essential to the public welfare.

Section 4. That, except as otherwise provided by this Ordinance, an owner of an MFRB shall register the MFRB by filing a completed registration form (the "the MFRB Registration Form") with the building official no later than January 31, 2010.

Section 5. That the building official shall use appropriate public and non-public databases to compile a list (the "MFRB List") of the City's MFRBs in numerical order, according to the following priorities:

First, MFRBs not registered with the building official as required by this Ordinance;

Second, MFRBs whose owners have not obtained Certificates of Occupancy or Life Safety Compliance Certificates as required by the Building Code;

Third, MFRBs that were subjects of one or more citations issued during 2009 for violations of the Building Code; and

Fourth, all other MFRBs.

Within the four groups described immediately above, MFRBs shall be ordered in a manner reasonably consistent with their respective dates of construction, older MFRBs first. For the purposes of this Ordinance, the date of an MFRB's construction is the most recent of (a) the date of construction according to the registration required by this Ordinance, unless the building official reasonably concludes that such information is not reliable; or (b) the date of construction according to an official website maintained by the appraisal district in which the MFRB is located; or (c) the date on which the building official issued a Certificate of Occupancy or a Life Safety Compliance Certificate for the MFRB.

Section 6. That the MFRB List shall be available for public view in the office of the City Secretary and at a website maintained by the City at least forty-five days before the building official conducts an inspection pursuant to the MFRB Inspection Program. The office of the City Secretary and said website both shall provide a mailing address for the submission of additional buildings that members of the public believe should be included on the MFRB List. Any building so added to the MFRB List shall be assigned the next consecutive number. In addition:

- (1) A newly constructed or rehabilitated multi-family rental building shall be added to the MFRB List four years after the date on which a Certificate of Occupancy is issued for the building;
- (2) For the purposes of subsection (1) immediately above, a Life Safety Compliance Certificate is not a substitute for a Certificate of Occupancy;
- (3) The building official may add a building to, or delete a building from, the MFRB List as long as the addition or deletion is consistent with the purposes and requirements of this Ordinance; and
- (4) If the building official deletes a building from the MFRB List, the number to which the building had been assigned shall be marked "Deleted," and the building official shall make a reasonable effort to avoid reassigning numbers to buildings on the MFRB List.

Section 7. That the building official's enforcement of the MFRB Inspection Program shall include inspections conducted in the order the buildings appear on the MFRB List, except that, with regard to buildings to whose owners the building official properly has sent letters stating that the buildings will be inspected during the same thirty-day period, the building official may inspect the said buildings in any order during the said period.

Section 8. That, as soon as reasonably possible, the building official shall schedule for a reactive inspection any building added to the MFRB List after February 15, 2010, for which neither a Certificate of Occupancy nor a Life Safety Compliance Certificate has been issued.

Section 9. That, when all buildings on the MFRB List have been inspected under the MFRB Inspection Program, the building official shall reinspect the buildings in the order the buildings appear on the MFRB List, repeating the inspection cycle *ad infinitum*, except that the building official shall omit from the then-current reinspection cycle any building that during the preceding four years:

- (1) Has been inspected at least once pursuant to the MFRB Inspection Program;
- (2) Has not been the subject of a "notice of violation" within the meaning of the Building Code; and
- (3) Has not been the subject of a citation alleging a violation of the Building Code or of Division 3 or Division 4 of Article IX of Chapter 10 of the Code of Ordinances.

Section 10. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not

be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 11. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the ninetieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this 4th day of November, 2009.

Bill White
 Mayor of the City of Houston

Requested by Michael S. Marcotte, P.E., Director
 Department of Public Works & Engineering

Prepared by Legal Dept. *T.M.P. Allen*
 First Assistant City Attorney

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
✓		HOLM
	ABSENT	GONZALEZ
✓		RODRIGUEZ
	ABSENT	BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: NOV 10 2009

Appendix 15

Work Force Protection Measures

Appendix 15

City Workforce Protection Measures

The City is committed to ensuring that the construction it finances protects workers on these projects by making sure they are safe, are compensated in accordance with applicable law and have access to pathways for sustainable careers in the construction industry. Contractors who work on developments financed under this NOFA will be required to implement certain policies designed to ensure every worker on the project is safe, receives appropriate pay, and has a path toward building a career in construction. All contractors of any tier that perform work on the development, unless otherwise specified, will be required to comply with the following workforce protection program and employment measures.

The City acknowledges many of these provisions may require additional costs. The department will consider award requests sufficient to cover additional costs associated with the new requirements. However, the City will still require the limitation of CDBG-DR awards to no greater than 50% of total development costs. The City reserves the right to revise the requirements of the workforce protection measures on an as-needed basis before and after issuance of CDBG-DR awards.

Pay or Play

In an effort to create a level playing field for competing contractors, the Pay or Play program (POP) mandates City Contractors to offer their employees a minimum level of health benefits or contribute a prescribed amount towards "Contractors Responsibility Fund" to defray the costs of providing health care to uninsured people in the Houston and Harris County area.

This program applies to contracts for services in which the total expenditure by the City, including contingencies, amendments, supplemental terms and/or change orders equals or exceeds \$100,000. This program also applies to subcontracts for services in which the total value of the subcontract, including contingencies, amendments, supplemental terms and/or change orders equal or exceeds \$200,000.

All project contractors (of any tier) must comply with the City's Pay or Play policies with regard to every Section 3 worker and apprentice-level worker that they employ for work on the project. Prior to the commencement of a covered contract, the contractor will declare its intent to comply with the Program and will submit a plan for compliance. Contractors will report to the City regarding the identity of covered subcontracts and covered employees working under subcontracts in the form and manner prescribed by the Administer (060).

Pay

If the contractor elects to comply by paying, the contractor will pay to the City \$1 for each regular hour of work performed by covered employees, including covered employees of covered subcontractors. All payments will be deposited into the City shall be deposited in the Contractor Responsibility Fund.

Play

If the contractor elects to comply by "playing", the contractor will provide documentary proof in a form acceptable to the Administrator that it provides the requisite level of health benefits

to each covered employee, and that covered employees of covered subcontractors are provided with health benefits. A contractor must contribute no less than \$150 per covered employee per month toward the total premium cost; and the covered employee may not contribute more than \$150 per month toward the premium. A contractor is deemed to have complied with this provision with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month. Program exceptions such as waivers and types of contracts that do not require participation can be found in Executive Order 1-7. For additional information regarding the City of Houston, Housing and Community Development Department compliance requirements you may visit: <http://vwww.houstontx.gov/housing/multifamilycompliance.html>

Workers' Compensation

The owner and general contractor will provide workers' compensation coverage provided with either project level policy or umbrella policy provided by the owner or GC HCDD will require that the owner and GC place signage onsite to properly inform workers of their benefits under this coverage. Developer must provide the Director of HCDD or his or her designee with evidence of worker's compensation coverage at the time of loan closing.

Awardees will be subject to these terms which will be included within the loan agreement.

Safety Training and Hourly Base Wage Rate

The owner and general contractor will be required to ensure that (1) all individuals performing project work, regardless of job designation or employment status, have received OSHA 10 certification and (2) at least one (1) on-site supervisor with OSHA 30 certification is present on the job site at all times that work is being performed.

In addition, any individual performing project work, regardless of job designation or employment status, will receive a minimum hourly wage of no less than the higher of (1) \$15.00 per hour or (2) the Federal prevailing wage.

If the applicant elects to include their statement on safety training, they will be required to certify within the HCDD contract they will employ contractors with adequate OSHA training. HCDD will require the construction contract with the general contractor include this provision as an addendum. HCDD will test compliance during onsite visits and payment applications.

If the applicant elects to include their statement on an hourly base wage rate, they will be required to certify within the HCDD contract they will comply with the Hourly base rate requirement of \$15.00 per hour for each worker. HCDD will require the construction contract with the general contractor include the Hourly Base Rate of \$15.00 requirement along with the applicable DBRA wage scale as an addendum. HCDD will test compliance during construction.

Awardees will be subject to these terms which will be included within the loan agreement.

Employment Training and Apprenticeships

HCDD expects project contractors to commit to the development of their craft workforce and invest in skills training linked to construction career paths. A minimum of 10% of all labor hours on each project must be performed by individuals enrolled in apprenticeship or craft training programs that are certified by the U.S. Department of Labor.

Owners will be required to certify within the HCDD contract they will employ contractors that adhere to the employment and apprenticeship policy. HCDD will require the construction contract with the general contractor include acknowledgement that 10% of all labor hours will be performed by apprentices enrolled in apprenticeship or craft training programs that are certified by the Department of Labor. HCDD will test compliance during construction. Awardees will be subject to these terms which will be included within the loan agreement.

Section 3

Awardees must, to the greatest extent feasible, employ Section 3 Residents (as defined in Title 24 CFR Part 135) for 30 percent (30%) of the aggregate number of new hires for each year over the duration of the project. At a minimum, awardees must, to the greatest extent feasible, ensure that 10 percent (10%) of all project work hours are performed by Section 3 Residents.

Awardees will be subject to these terms which will be included within the loan agreement.

Employment Classification

HCDD expects its awardees to hire responsible contractors who can reliably verify the proper employment classification of all individuals they engage to perform work on covered projects and provide verified reporting of wages owed and paid to employees and monthly certified payroll data to the City.

All Section 3 workers and apprentice-level workers must be directly employed by a project contractor. In addition, all self-employed workers will be subject to the same compensation standards and protections as other employees/contractors outlined in this policy.

Awardees will be subject to these terms which will be included within the loan agreement.

Davis Bacon and Related Acts (DBRA)/Labor Standards Provisions

All City financed developments require compliance with the Davis-Bacon Labor Standards no matter the use of HCDD's funds. Davis-Bacon and Related Acts require that prevailing wage rates be paid to all construction laborers regardless of job designation or employment status.

Compliance Plan

The Borrower and Owner will be required to submit a plan for implementing these measures. The plan is not required to have detailed procedure, but at minimum an acknowledgement that the applicant will inform general contractors that they and all subcontractors of any tier will be subject to these terms when solicited for the referenced development.

EXHIBITS TO LOAN AGREEMENT

EXHIBIT A	Legal Description of the "Land"
EXHIBIT B	Commitments for "Other Financings"
EXHIBIT C	Preliminary Construction Budget
EXHIBIT D	Scope of Work
EXHIBIT E	Construction Schedule.

**EXHIBIT A
PROPERTY DESCRIPTION**

***THE LEGAL DESCRIPTION WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.**

EXHIBIT B
COMMITMENTS FOR "OTHER FINANCINGS"
[Attached]

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

CFDA:	14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM
Awarding Federal Agency:	U.S. Department of Housing and Urban Development
Federal Award Number:	M - 21-SG-48-0100
Federal Award Year:	2021
Pass Through Entity:	Texas Department of Housing and Community Affairs
HUD Entity Type:	Developer
Uniform Application Number:	21509
TDHCA Award Year:	2021
Unique Entity Identifier Number:	117458735

This Multifamily Direct Loan Contract #1003234 (the "**Contract**") in connection with a HOME Investment Partnerships Program ("**HOME**") award is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, (the "**Department**"), and **HOUSTON DMA HOUSING II, LLC**, a Texas limited liability company (the "**Development Owner**" or "**Borrower**") (herein collectively referred to as the "**Parties**"), to be effective on the Effective Date defined herein.

RECITALS

WHEREAS, the Development Owner agrees to administer a HOME Multifamily Direct Loan award in accordance with the HOME Investment Partnerships Program ("**HOME Program**") under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 *et seq.*) (the "**Federal Act**"), its implementing federal regulations at 24 CFR Part 92 (the "**Federal HOME Regulations**"), the plan for the HOME Program submitted and approved in accordance with 24 CFR Part 91 (the "**Consolidated Plan**") the applicable federal notices issued by the United States Department of Housing and Urban Development ("**HUD**") or other applicable federal agencies, Chapter 2306 of the Texas Government Code (the "**State Act**"), its implementing state administrative rules at Title 10, Part 1, Chapter 1 of the Texas Administrative Code (the "**Administrative Rules**"), Title 10, Part 1, Chapter 2 of the Texas Administrative Code (the "**Enforcement Rules**"), Title 10, Part 1, Chapter 10 of the Texas Administrative Code (the "**Uniform Multifamily Rules**"), Title 10, Part 1, Chapter 11 of the Texas Administrative Code (the "**Qualified Allocation Plan**"), and Title 10, Part 1, Chapter 13 of the Texas Administrative Code (the "**Multifamily Direct Loan Rule**") (collectively referred to as the "**State Multifamily Rules**"), respectively, in addition to the following selections and/or requirements outlined in the: application package for the HOME Program, Uniform Multifamily Application #21509 (the "**Application**"), the 2021-3 Multifamily Direct Loan Notice of Funding Availability as defined in the State Multifamily Rules (the "**NOFA**"), and any amendments thereto;

WHEREAS, the Development Owner is or will be upon the Loan Closing Date, the owner, of certain improvements (the "**Improvements**") that consist of a one hundred forty-five (145) Unit multifamily rental housing Elderly Development known as Ella Grand (the "**Development**") situated on real property (the "**Land**") located in the City of , County of Harris, State of Texas, more fully described in Exhibit A attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter referred to as the "**Property**";

WHEREAS, the Department has approved the Development Owner for the HOME Award Amount defined herein from the Department to perform the activities under this Contract;

WHEREAS, the Department is willing to make a loan to the Development Owner in the amount of the HOME Award Amount (the "**Loan**");

WHEREAS, on , the Department committed to make the Loan, which shall be used by Borrower for the construction of the Development in accordance with that certain preliminary award and conditions (the "**Award Letter**") attached as Exhibit B to this Contract and incorporated herein for all relevant purposes;

WHEREAS, as of the Effective Date of this Contract, a firm written commitment for all the necessary financing for the Property has been secured as evidenced by the Award Letter and the "**Underwriting Report and Amended/Revised Reports and/or Multifamily Direct Loan Budget and Sources and Uses**" attached as Exhibit C to this Contract and incorporated herein for all relevant purposes, as said exhibits may be revised, updated or amended from time to time; therefore, this Contract, including the exhibits attached to the Contract as amended, constitutes a legally binding agreement and meets the requirements under the federal definition of "**Commitment**" of funds to a specific local project, as defined in Paragraph (2) of 24 CFR §92.2; and

WHEREAS, pursuant to the Federal Act, State Act, Consolidated Plan, Federal HOME Regulations, and State Multifamily Rules (Federal HOME Regulations and State Multifamily Rules collectively referred to as the "**HOME Regulations**"), as amended from time to time, Development Owner, as a condition to the Department making the Loan, must agree to comply with: (1) certain occupancy, rent, and other restrictions under the Federal Act, Consolidated Plan, and Federal HOME Regulations during the Federal Affordability Period (hereinafter defined), and (2) additional certain occupancy, rent, and other restrictions required under the State Act and State Multifamily Rules during the State Affordability Period (hereinafter defined); and

WHEREAS, pursuant to the State Multifamily Rules, as amended from time to time, Development Owner, as a condition to the Department making the Loan, must agree to comply with certain occupancy, rent and other restrictions under the State Act, and the Parties shall enter into a Land Use Restriction Agreement (the "**LURA**") to evidence the Development Owner's agreement to comply with such restrictions, and said LURA shall be recorded in the official public records of the county where the Property is located to evidence covenants running with the land.

NOW, THEREFORE, for and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Contract and any and all attachments to this Contract, incorporated herein for all relevant purposes, and which may be more thoroughly defined in the loan closing documents (the "**Loan Documents**"), as defined in Section 5.15 of this Contract and incorporated herein for all relevant purposes.

AGREEMENT

SECTION I. MULTIFAMILY DIRECT LOAN PROGRAM

Development Owner shall implement the Multifamily Direct Program in accordance with this Contract and pursuant to the Federal Act, HOME Regulations, State Act, Application, and applicable Texas statutes and rules utilizing **Two Million One Hundred Eighty Thousand And No/100 United States Dollars (U.S. \$2,180,000.00)** (the "**HOME Award Amount**") in project funds for the **new construction** of the Property. As determined in the Department's reasonable discretion, changes made without prior written consent of the Department that affect the terms or otherwise implementation of this Contract or the Property, may result in default under the Loan Documents or termination of this Contract.

SECTION II. CONTRACT TERM

Contract Term begins on the Effective Date of this Contract as defined herein and terminates at the end of the Federal Affordability Period, as may from time to time be amended or extended in writing and signed by both Parties (the "**Contract Term**").

SECTION III. DEFINITIONS

Section 3.1 General

Capitalized terms used in this Contract shall have the meanings specified in this Section III of the Contract, unless the context clearly requires otherwise. Certain additional terms may be defined elsewhere in this Contract. If the definition and terms of this Contract conflict with the definition and terms of the Application, Award Letter, underwriting report(s) issued by the Department's Real Estate Analysis Division, or related preliminary program documents, then this Contract shall control unless it would make the Contract void by law. Any capitalized terms not specifically mentioned in this Contract (including any and all addendums or exhibits to this Contract) shall have the meaning as defined in 10 TAC §11.1(d) of the Qualified Allocation Plan, 10 TAC §13.2 of the Multifamily Direct Loan Rule, the State Act, the Federal Act, and the Federal HOME Regulations, as applicable.

- a. "**Adaptive Reuse**" means the change in use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least seventy-five percent (75%) of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse

Developments will be considered New Construction as designated in Section 8.3, Construction Standards.

- b. **"Affordability Period"** means the period commencing on the date of Project Completion and ending on the date which is forty-five (45) years from the date of such Project Completion and is inclusive of both the Federal Affordability Period and the State Affordability Period.
- c. **"Area Median Income" or "AMI"** means the median income, adjusted for family size, for the area where the Property is located, as such median income is established by HUD at least annually in accordance with the Federal Act, or as otherwise established by the Department.
- d. **"Construction Completion"** means that title transfer requirements and construction work have been performed as reflected by the Development's certificate(s) of occupancy, Certificate of Substantial Completion (AIA Form G704 or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized).
- e. **"De Minimis Amounts"** means any Hazardous Materials either (a) being transported on or from the Property or being stored for use by Development Owner or a tenant on the Property in connection with Development Owner's or such tenant's operations or tenancy, or (b) being used by Development Owner or a tenant on the Property, in either case in such quantities and in a manner that both (i) do not constitute a violation or threatened violation of any Environmental Laws and Regulations, Governmental Requirements or require any reporting or disclosure under any Environmental Laws and Regulations or Governmental Requirements, and (ii) are consistent with customary business practice for such operations in Texas.
- f. **"Department Monitoring Procedures"** means procedures and requirements adopted or imposed by the Department or HUD for the purpose of monitoring and auditing the Property and the books and records of the Development Owner for compliance with this Contract, the Federal HOME Regulations, Subchapter B of the Administrative Rules; the Enforcement Rules, and Subchapters F and G of the Uniform Multifamily Rules, as may be amended from time to time.
- g. **"Displaced Person"** means a person that moves from the Development or moves personal property from the Development, permanently, as a direct result of acquisition, Reconstruction, Rehabilitation, Adaptive Reuse, or demolition of the Development or as otherwise provided in the Federal HOME Regulations.
- h. **"Efficiency Unit"** means a Unit without a separately enclosed Bedroom.
- i. **"Environmental Laws and Regulations"** means any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended, the Hazardous Materials Transportation Act (49 U.S.C.A. §1801 *et seq.*); Insecticide Fungicide and Rodenticide

Act (7 U.S.C.A. §136 *et seq.*); National Environmental Policy Act (42 U.S.C. §4321 *et seq.*) ("**NEPA**"); Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 *et seq.*) ("**CERCLA**"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) ("**Superfund**" or "**SARA**"); Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 *et seq.*) ("**RCRA**"); Toxic Substances Control Act (15 U.S.C.A. §2601 *et seq.*); Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 *et seq.*); Clean Air Act (42 U.S.C.A. §7401 *et seq.*) ("**CAA**"); Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 *et seq.*) ("**Clean Water Act**" or "**CWA**"); and any corresponding state laws or ordinances; including but not limited to, Chapter 26 of the Texas Water Code regarding Water Quality Control, Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7), Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code), County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code), Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code) and Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code), and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, and such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

- j. "**Extremely Low-Income Families**" means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the AMI in the area in which the Property is located, or such other income limits as established by HUD or as otherwise determined by the Department.
- k. "**Federal Affordability Period**" means the period commencing on the date the project is completed, as defined by the Federal Act and ending on the date which is twenty (20) years from the date of Project Completion in accordance with the Federal Act, Consolidated Plan, and Federal HOME Regulations.
- l. "**Governmental Authority**" means the United States of America, the State of Texas, the County of , Texas, and the City of Texas, and any political subdivision of any of the foregoing, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Development Owner or the Property.
- m. "**Governmental Requirements**" means all federal, state and local laws, statutes, notices, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances under this Contract.
- n. "**Hazardous Substance**" or "**Hazardous Material**" means any substance defined as a hazardous substance, hazardous material, hazardous waste, toxic substance or toxic waste in the CERCLA (42 U.S.C. §9601 *et seq.*); the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 *et seq.*); the RCRA, as amended (42 U.S.C. §6901 *et seq.*); or any similar applicable federal, state or local law; or in any regulation adopted or publication promulgated pursuant to any said law, either existing or promulgated from time to time, other than *De Minimis* amounts of any such substances.

- o. **"HOME Match-Eligible Unit"** means a Unit in the Development that is not assisted with HOME Program funds from the Department or any other Participating Jurisdiction as defined under 24 CFR Part 92, but would qualify as affordable rental housing under 24 CFR Part 92 (a Unit occupied by families and individuals whose Annual Incomes do not exceed eighty percent (80%) of AMI), and that is eligible to be considered for Match under 10 TAC §13.10(c) and 24 CFR Part 92. No HOME Match-Eligible Unit may have a Project-Based Voucher issued under 24 CFR Part 983.
- p. **"Low-Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the AMI, or such other income limits as established by HUD in accordance with the Federal Act, or as otherwise determined by the Department.
- q. **"LURA Term"** means the Affordability Period as defined herein.
- r. **"Project Completion"** has the meaning as defined in 24 CFR Part 92.
- s. **"Project Documents"** means all tenant lists, applications, (whether accepted or rejected), leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, utility allowance documentation, income examinations and re-examinations relating to the Property and other documents otherwise required by the Department.
- t. **"Qualified Tenant(s)" or "Qualified Resident(s)"** means a family, household of tenants, or individual tenant of a Qualifying Unit who satisfies the requirements of Section VI of this Contract with respect to such Qualifying Unit.
- u. **"Qualifying Unit"** means a Unit designated as floating pursuant to the Multifamily Direct Loan Rule and 24 CFR §92.252(j), that is rented to either a Low Income Family, a Very Low Income Family, or an Extremely Low Income Family; and is used in complying with the occupancy requirements subject to applicable Federal HOME Regulations, as provided in Section 6.1(a) of this Contract; and may not have a Project-Based Voucher issued under 24 CFR Part 983.
- v. **"State Affordability Period"** means the LURA Term as defined herein and as required by the Department in accordance with the State Act and State Multifamily Rules.
- w. **"Very-Low Income Families"** means families and individuals whose Annual Incomes do not exceed fifty percent (50%) of the AMI, or such other income limits as established by HUD in accordance with the Federal Act, or as otherwise determined by the Department.

Section 3.2 Generic Terms

Unless the context clearly indicates otherwise, where appropriate, the singular shall include the plural, and the masculine shall include the feminine or gender neutral, and vice versa, to the extent necessary to give the terms defined in this Section III of this Contract or the terms otherwise used in this Contract their proper meanings.

SECTION IV. MATCH

Section 4.1 Amount of Match Funds Required

The minimum amount of Match required under this Contract is One Hundred Sixty-Five Thousand and No/100 Dollars (\$165,000.00) (the “**Amount of Match Funds Required**”). The actual amount of Match contributed may exceed the Amount of Match Funds Required.

Section 4.2 Eligible Match Funds

Unless otherwise waived by the Department as evidenced by the Amount of Match Funds Required under Section 4.1 of this Contract, Development Owner will identify and provide eligible Match funds in accordance with the requirements of CPD Notice 97-03 or its successors, the Multifamily Direct Loan Rule, and the NOFA identified herein, or other similar governing document that includes the basic application and funding requirements.

Section 4.3 Evidence of Match

Development Owner must submit evidence of Match in conjunction with the requests for disbursement of funds. Pursuant to the Multifamily Direct Loan Rule, the Development Owner may request up to seventy-five percent (75%) of the Award Amount for an activity before providing evidence of Match. Thereafter, Development Owner must provide evidence of Match, including the date Match is provided, prior to the final release of funds.

SECTION V. LOAN CLOSING AND LOAN DOCUMENTS

Section 5.1 Loan Terms

Unless otherwise provided herein, the Department will fund a Loan to Development Owner in accordance with the Multifamily Direct Loan Rule and the terms and conditions provided in this Section 5.1 and in the Award Letter attached hereto as Exhibit B of this Contract. The terms of the Loan may be amended in accordance with and subject to the requirements under Sections 13.12 and 13.13 of the Multifamily Direct Loan Rule. Capitalized terms used in this Section V of the Contract shall have, unless the context clearly requires otherwise, the meanings specified in the Award Letter.

- a. Loan Term. The Loan Term will be fifteen (15) years, beginning at the end of the Development Period, as defined in Section 5.4 of this Contract, on the twenty-fourth (24th) month after the Loan Closing Date.
- b. Interest Rate. Zero percent (0%) per annum.
- c. Loan Amortization. The Loan will be non-amortizing.
- d. Payment Terms. Payment of unpaid principal and interest, if any, shall be due and payable at the end of the Loan Term.
- e. Special Loan Terms. Not applicable.

- f. Development Period Lien Position. During the Development Period, the Loan will be in subordinate lien position subject to the Shared Proceeds Agreement to be executed at Loan Closing, the form template attached to this Contract as Exhibit D. The lien position during the Development Period may vary.
- g. Permanent Period Lien Position. After the Development Period, the Loan will be in second lien position subject to the Shared Proceeds Agreement to be executed at Loan Closing, the form template attached to this Contract as Exhibit D.

Section 5.2 Loan Closing Date

The Loan must close no later than twelve (12) months from the Effective Date of this Contract pursuant to the Multifamily Direct Loan Rule ("**Loan Closing Date**"), unless Department, in its sole discretion, chooses to extend the Loan Closing Date in accordance with the Multifamily Direct Loan Rule. This Contract and all Department's obligations hereunder may expire, in the Department's discretion, if all conditions to the closing and initial funding, if applicable, are not satisfied by the Loan Closing Date.

Section 5.3 Due Diligence Due Date

Borrower shall deliver all of the information required by this Contract, including but not limited to the items listed under Section 5.13 and 5.14, as applicable, of this Contract and 10 TAC §13.11(c)(12) of the Multifamily Direct Loan Rule, no later than forty-five (45) days before Loan Closing Date ("**Due Diligence Due Date**"). Pursuant to 10 TAC §13.11(b)(11), Development Owner's failure to provide fully completed documents or timely respond to subsequent requests from the Department for materials needed to facilitate closing, may significantly inhibit the Department's ability to meet closing timelines. Accordingly, the Department may, in its sole but reasonable discretion, determine that such information is inadequate or incomplete or has not been received by the Department by said date, whereby the Department may extend the Loan Closing Date or terminate this Contract.

Section 5.4 Development Period

Construction must commence no later than twelve (12) months from the Effective Date of this Contract in accordance with the Multifamily Direct Loan Rule, and subject to Section 8.1 of this Contract, must be completed by the end of the Development Period. Pursuant to the Multifamily Direct Loan Rule, the Development Period shall be twenty four months, coterminous with the construction term of any superior construction loan(s), as may be extended, but in no event greater than thirty-six (36) months from the Loan Closing Date, as may be extended in accordance with the applicable provisions of the Multifamily Direct Loan Rule.

Section 5.5 LURA

The LURA is required by the Department, executed by Development Owner and recorded in the appropriate county office for property records, and restricts the Property to certain occupancy and rent requirements for the Affordability Period. During the Federal Affordability Period of the LURA, the Property will be subject to all applicable federal laws and regulations regarding affordability requirements. During the State Affordability Period, the Property will be subject to applicable state affordability requirements. Among other restrictions, the LURA requires the Development Owner of the

Property to continue to accept subsidies which may be offered by the federal government, provide notice when exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the Property as affordable housing on a case-by-case basis. The LURA may be amended in accordance and subject to the requirements under Section 10.405(b) of the Uniform Multifamily Rules, as may be amended from time to time.

Section 5.6 Title Insurance

Borrower must provide the Department with an Interim Construction Binder or Mortgagee's Policy of title insurance, as applicable, for the Property, (from a title insurer acceptable to the Department) issued on standard forms promulgated by the Texas Department of Insurance, in the amount of the Loan, showing Department to be in a lien position consistent with the terms of the Contract. At closing, the Borrower must be prepared to provide the Department with the Binder/Mortgagee Policy with only such exceptions to title on Schedule B as acceptable to Department. The Department shall require the standard survey deletion, deletion of the Arbitration Clause, and inclusion of an Environmental Endorsement.

Section 5.7 Insurance

- a. Borrower must obtain and maintain (or cause to be obtained and maintained) during the entire Loan Term, property and casualty insurance in an amount sufficient to protect Department's interest in the Property, issued on a replacement cost basis and insuring the full replacement cost of the Property. This insurance is to be furnished through a company of Borrower's choice with a rating of at least A- by Standard & Poor Insurance Solvency Review and/or at least "A, XI" by Best's Insurance Guide with the Texas Department of Housing and Community Affairs listed as a mortgagee and not as a co-insured. If the Department, in its sole discretion deems the Property to be at risk for special hazards, the Department may require additional coverage for flood, windstorm or earth movement. Borrower must also obtain and maintain (or cause to be obtained and maintained) public liability insurance in the minimum amount of One Million and No/100 Dollars (\$1,000,000.00), or such other amount as the Department may from time to time require by giving notice to Borrower, with the Department listed as an additional insured. Borrower must also obtain and maintain (or cause to be obtained and maintained by its general contractor) during any and all times improvements on the Property are under construction, public liability insurance (including worker's compensation insurance), with the Department listed as an additional insured, and carry builder's risk property insurance in non-reporting ("completed value") form on a replacement cost basis (in lieu of carrying commercial property insurance during the construction period), endorsed to be payable to the Department listed as a mortgagee and loss payee. Evidence of insurance shall be provided annually to the Department.

- b. Borrower must obtain flood insurance for the buildings that are located in the one hundred (100) year Floodplain and have not been elevated above the floodplain and for the tenants' contents in those same buildings pursuant to Section 9.7 of this Contract, in accordance with 10 TAC §11.101(a)(1) and 10 TAC §11.302(g)(2)(B)

- c. Furthermore, if the Property is zoned for a legal but nonconforming use, Borrower must also obtain and maintain ordinance and law insurance coverage for the (i) loss of Improvements because of forced removal based on zoning violations; (ii) related demolition costs; and (iii) increased costs of repair or construction which is attributable to enforcement of zoning requirements. This additional insurance coverage may be obtained by endorsement to existing property insurance policies.
- d. The Development Owner shall provide the Department with insurance policies evidencing the Development Owner's current and effective insurance coverage. Development Owner agrees to notify the Department promptly upon receipt of notification of the termination, cancellation, expiration, or modification of any required insurance coverage or policy endorsements. The Development Owner shall suspend the performance of all work performed under this Contract until the Development Owner satisfies the required coverage requirements, obtains the required policy endorsements and delivers to Department certificates of insurance evidencing that such coverage and policy endorsements are current and effective, and receives notification from Department that the performance of work under this Contract may recommence, which shall be delivered promptly following the Department's receipt of foregoing items.

Section 5.8 Taxes, Insurance, and Escrow

All ad valorem taxes and all special or improvement assessments, if any, which are due and payable and affect the Property must be paid in full at or prior to closing. Development Owner must create a reserve for the payment of all insurance premiums, taxes, and assessments against the Property by depositing (and providing Department written evidence annually, or more frequently if requested by the Department, of such deposits in a form satisfactory to Department) in an account with Department as an additional signatory authority on said account in a federally insured bank or savings and loan approved by Department, for the Loan Term concurrent with the payment of principal and interest, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Property, or any part thereof, plus taxes and assessments next due on the Property, or any part thereof, as estimated by Department, less all sums deposited therefore, divided by the number of months to elapse before one (1) month prior to the date when such premiums, taxes and assessments will become delinquent. All such funds so deposited may not be mingled with the general funds of Development Owner and shall be applied by Development Owner toward the payment of such taxes, assessments, charges and premiums when statements therefore are presented to Development Owner. Evidence of payment of taxes and insurance is to be provided annually to Department.

Section 5.9 Survey

Borrower agrees to provide the Department, at Borrower's expense, a current survey of the Property, showing any improvements as built and otherwise satisfactory to Department. The survey must be a class 1A urban survey and/or a Class 1A As-built survey and must be accompanied by a description of the Property and a surveyor's certificate, both of which must be satisfactory to Department, Department's counsel, and the title company. The survey must be sufficient to allow the title company to amend the title policy survey exception to provide for shortages in area only. The survey must also show whether any portion of the Property is located within a designated 100-year Floodplain. The survey must show any and all encroachments. If there are any encroachments, the Department reserves the right to hold

or condition funding until the encroachment issues have been resolved. The survey must also be certified to the Department, the Borrower, and the title company in accordance with the Multifamily Direct Loan Rule.

Section 5.10 Attorney's Opinion

A written opinion of Borrower's attorney dated as of the Loan Closing Date, shall state the following:

- a. If Borrower is a corporation, that Borrower is duly organized, validly existing and in good standing under the laws of the state of their incorporation, and has the power and authority to transact business in the state of Texas and that there are no provisions in the documents creating or controlling any of them which prohibit the execution and delivery of the Loan Documents.
- b. Borrower is not in violation of its respective charters or bylaws (if a corporation) nor in default in any material respect in the performance of any obligation, agreement or condition contained in any bond, debenture, promissory note or any other evidence of indebtedness to which such Borrower is a party.
- c. That the execution and delivery of the Loan Documents, and the performance by Borrower hereunder, have been duly authorized by all necessary action, and do not and will not require any consent or approval (except those which have been supplied) and do not and will not violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower (including, but not limited to applicable usury laws).
- d. That the execution, delivery and performance of and under the Loan Documents and the consummation of the transactions contemplated therein will not conflict with or constitute a breach of any of the terms of, or a default under, creating or controlling Borrower and will not cause a material breach of any agreement, indebtedness indenture or other instrument to which Borrower is a party.
- e. That the Loan Documents constitute valid, legal and binding obligations of Borrower, enforceable in accordance with their terms (subject to applicable bankruptcy, insolvency or other laws affecting enforceability or creditors' rights generally).
- f. That there are no actions, suits or proceedings, including environmental actions, pending or, to such attorney's knowledge, threatened against Borrower which, if adversely decided, would have a material adverse effect upon Borrower.
- g. The Property is not subject to any state or federal environmental liens.
- h. That Borrower is not knowingly in default with respect to any requirement of a governmental agency.

Section 5.11 Attorney's Fees

Borrower shall be responsible for paying Department's attorney's fees incurred in connection with the negotiation, document preparation, and closing of the Loan to the extent allowable under the Department's governing statutes. In the event that the Loan does not close, Borrower's acceptance of this Contract constitutes Borrower's agreement to pay Department's attorney's fees incurred in connection with the Loan to the extent allowed by law.

Section 5.12 Closing Costs

Borrower shall be responsible for all closing costs, including but not limited to appraisal fees, environmental assessment fees, survey fees, premiums for title insurance, escrow fees, recording fees and other similar costs and expenses incurred in connection with the closing of this Loan. In the event that the Loan does not close, Borrower's acceptance of this Contract constitutes Borrower's agreement to pay all costs actually incurred by Department in connection with the Loan.

Section 5.13 Due Diligence

The applicable items and information listed in the Award Letter, the items and information listed in 10 TAC §13.11(b)(11), and any other required documentation as requested by the Department in its reasonable discretion shall be delivered to and approved by the Department on or before the Due Diligence Due Date in accordance with the Multifamily Direct Loan Rule, but in no event later than the Loan Closing Date.

Section 5.14 Additional Information

The Department reserves the right to require additional or updated information (e.g. financial statements, copies of organizational and authorizing documents, name(s) and résumé(s) of consultant(s)) prior to closing. Failure to provide such additional or updated information shall constitute a breach of Borrower's obligations and shall entitle Department to terminate this Contract.

Section 5.15 Loan Documents

Borrower's execution and delivery of the promissory note, deed of trust, LURA, construction loan agreement if applicable, the Shared Proceeds Agreement, and all other documents evidencing, securing, or executed in connection with the Loan in form and substance acceptable to the Department and as further defined in the Multifamily Direct Loan Rule (collectively, the "**Loan Documents**"). The Loan Documents shall fully set forth the terms and conditions of the Loan. Borrower's counsel will be provided with unexecuted Loan Documents at least ten (10) calendar days before Department provides Loan Documents to a title company. Borrower's counsel will be provided with final closing documents simultaneously with the title company. The Loan Documents must be executed on or before the Loan Closing Date in accordance with the terms herein. Within three (3) days of review of the fully executed Loan Documents, Borrower's counsel will provide the Attorney Opinion Letter as described in Section 5.10 of this Contract. In any case, should there be any contradictions in terms between the Award Letter and the finalized Loan Documents, the terms within the executed Loan Documents will supersede the Award Letter.

Section 5.16 Non-Recourse

The Department's underwriting guidelines have determined the type of recourse the Department shall have against Borrower for payment and performance of all obligations, covenants, and agreements of

Borrower under the Loan. Pursuant to said guidelines, the Loan will be non-recourse, and notwithstanding anything herein to the contrary, Department shall have no recourse against Borrower for payment and performance of all of the obligations, covenants and agreements of Borrower under the Loan and the documents securing the Loan. If default occurs in the timely and proper payment of any portion of such indebtedness or in the timely performance of any of such obligations, agreement or covenants, any judicial proceedings brought by Department against Borrower shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing the payment of the Loan, and enforcement and collection of obligations, covenants and indebtedness for which Borrower remains liable. If there is a foreclosure of any such liens, mortgages, assignments, rights, and security interests securing the payment of this Loan, by power of sale or otherwise, no judgment for any deficiency upon such indebtedness shall be sought or obtained by Department against Borrower. Notwithstanding the foregoing provisions of this paragraph, the Department shall have full recourse against Borrower for: (a) fraud or misrepresentation by Borrower in connection with the transactions herein contemplated; (b) failure to pay taxes, assessments, charges for labor or materials, or other charges that can create liens on any portion of the Property; (c) the misapplication of (i) proceeds of insurance covering any portion of the Property, or (ii) proceeds of the sale or condemnation of any portion of the Property, or (iii) rentals received by or on behalf of Borrower subsequent to the date on which Department gives written notice of the posting of foreclosure notices; (d) failure to prevent waste to the Property unless Department is compensated therefore by insurance proceeds collected by Borrower; (e) failure to return to Department all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants; (f) failure to return or reimburse for, all personal property taken from the Property by or on behalf of Borrower; (g) all court costs and for all reasonable attorneys' fees incurred by Department provided for in any instrument governing, securing or pertaining to the payment of the promissory note; and (h) failure to comply with any indemnification provision or covenants pertaining to environmental matters contained in the deed of trust or any other security documents.

Section 5.17 Prepayment Provisions

The Loan may be prepaid in whole or in part at any time without penalty, subject to the requirements and limitations provided in the Multifamily Direct Loan Rule. Prepayment of Loan does not release Borrower from conditions and limitations placed on the Property under the LURA or this Contract.

Section 5.18 Due on Sale Clause

Borrower shall not sell, transfer, or convey the Property in whole or in part without Department's prior written consent. Upon a sale, transfer, or conveyance that is without the Department's consent, the Department, at its option, may declare all outstanding sums immediately due and payable.

SECTION VI. USE, OCCUPANCY AND RENT OF THE PROPERTY

Section 6.1 Occupancy Requirements

Pursuant to 10 TAC §13.10(b) 24 CFR §92.252(j), Units must be set aside for income eligible individuals and families as set forth below and pursuant to the LURA. Qualifying Units cannot be Units assisted with HOME funds from another participating jurisdiction as defined under 24 CFR Part 92.

- a. Initial Occupancy Requirements. Notwithstanding anything in this Contract or in the LURA to the contrary, at the time of occupancy of the Development or at the time funds are invested in the Development, whichever is later, but in no event later than six (6) months from the final draw of loan funds, unless extended in accordance with the Multifamily Direct Loan Rules, Development Owner must set aside sixteen (16) floating Units (the “**Qualifying Units**”) of the one hundred forty five (145) Units that comply with the following occupancy requirements:

all sixteen (16) floating Units of the sixteen (16) Qualifying Units constructed with funds provided under the HOME Program must be occupied by Extremely Low Income Families whose Annual Incomes do not exceed thirty percent (30%) of the AMI

- b. Long Term Occupancy Requirements. Pursuant to subsection (a) of this Section 6.1 of the Contract and the LURA, during the Contract Period or LURA Term, whichever period is longer, following the initial occupancy period, Development Owner will make available for occupancy:

all sixteen (16) floating Units of the sixteen (16) Qualifying Units constructed with funds provided under the HOME Program must be occupied by Extremely Low Income Families whose Annual Incomes do not exceed thirty percent (30%) of the AMI

- c. Unit Mix. Subject to subsections (a) and (b) of this Section 6.1 of the Contract, during the Affordability Period Development Owner will make all Qualifying Units available for occupancy with the following mix of unit types as defined in the Qualified Allocation Plan and as updated by the Department in electronic mails dated February 24, 2022, March 1, 2022 and March 2, 2022 from the Department:

Eleven (11) Units of the Qualifying Units with one (1) Bedroom, one (1) bath and Net Rentable Area (NRA) of 716 to 791 square feet (sq. ft.), plus or minus (+/-) ten (10) sq. ft.;

One (1) Unit of the Qualifying Units with one (1) Bedroom, one (1) bath and Net Rentable Area (NRA) of 877 to 950 square feet (sq. ft.), plus or minus (+/-) ten (10) sq. ft.;

Four (4) Units of the Qualifying Units with two (2) Bedrooms, Two (2) bath(s) and Net Rentable Area (NRA) of 1,027 square feet (sq. ft.), plus or minus (+/-) ten (10) sq. ft.; and

At least five percent (5%) of the Qualifying Units will be designed and built to be accessible to persons with mobility impairments, meeting the accessibility requirements of construction requirements of 2010 ADA standards with the exceptions listed in Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities *Federal Register 79 FR 29671* and at least two percent (2%) of the Qualifying Units will be designed and built to be accessible to persons with vision and hearing impairments.

- d. HOME Match-Eligible Units. Notwithstanding anything herein or in the LURA to the contrary, during the Federal Affordability Period for HOME Match-Eligible Units, Development Owner must

set aside two (2) floating Units to be treated by the Department as HOME Match-Eligible Units for the Department's purposes under the HOME Program as follows:

The HOME Match-Eligible Units must be occupied by individuals and families whose Annual Incomes do not exceed eighty percent (80%) of the AMI; and

All two (2) floating Units, other than the Qualifying Units, must be designated and treated as a HOME Match-Eligible Unit.

- e. Concentration of Low-Income Families. Development Owner shall use its best efforts to distribute Qualifying Units reserved for Extremely Low-Income Families among Unit sizes in proportion to the distribution of Unit sizes and with regard for the Development/Unit Requirements and Amenities provided, in the Property for the total Development, pursuant to 10 TAC §13.10(a) and to avoid concentration of Extremely Low-Income Families in any area or areas of the Property.
- f. Elderly Development. Throughout the Affordability Period, unless otherwise permitted by the Department, this Development must conform to the Federal Fair Housing Act and must be a Property which:
 - (i) as determined by the Secretary of HUD, is specifically designed and operated to assist elderly persons as defined in and provided under any State or Federal program;
 - (ii) is intended for, and solely occupied by persons sixty-two (62) years of age or older; or
 - (iii) is intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per Unit, where at least eighty percent (80%) of the total housing Units are occupied by at least one (1) person who is fifty-five (55) years of age or older; and adheres to policies and procedures which demonstrate an intent by Development Owner and manager to provide housing for persons fifty-five (55) years of age or older.
- g. Preference or Limitation on Resident Population. Not applicable.
- h. Repayment of Funds. Pursuant to the Multifamily Direct Loan Rule, HOME funds may be required to be repaid on a per-Unit basis if the Qualifying Units are not rented to eligible tenants within eighteen (18) months of the final draw of loan funds.

Section 6.2 Accessibility

- a. Pursuant to 24 CFR §§92.251(a)(2)(i) and (b)(1)(iv), Development Owner must ensure the Property will meet or exceed the accessibility requirements under (1) 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); (2) Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189), as implemented by the applicable Department of Justice regulations at 28 CFR Parts 35 and 36; the (3) the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100.

- b. The Development must also meet the specification and accessibility requirements provided in the Department's Accessibility rules in 10 TAC §11.101(b)(8) and Title 10, Part 1, Chapter 1, Subchapter B of the Texas Administrative Code, as may be amended from time to time. Moreover, Sections §2306.257 and §2306.6705(7) of the State Act require that the Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards.
- c. For the purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type, as defined in the Qualified Allocation Plan, will be used. Alternative methods of calculating the number of accessible Units required in a development must be approved by the Department prior to award or allocation.
- d. In accordance with Section 504 of the Rehabilitation Act of 1973 and implemented at 24 CFR Part 8, the Development Owner will ensure that at least five percent (5%)
- e. If the Development includes the new construction, Rehabilitation, or Reconstruction of single family Units (one (1) to three (3) Units per building), the Development Owner will ensure that every Unit meets or exceeds the accessibility requirements of Section 2306.514 of the State Act, as it may be amended.

Section 6.3 Use of the Property

- a. Rental Housing. The Development Owner shall continuously use the Property as rental housing during the Contract Term or Affordability Period, whichever is longer, in order to meet the occupancy requirements of this Contract.
- b. Federal Affordability Period For HOME Match-Eligible Units. Development Owner must comply with the set aside requirements for HOME Match-Eligible Units under Section 6.1(d) of this Contract during the period commencing on the date of Project Completion as defined herein and as determined by the Closed Final Development Inspection Letter and ending on the date which is twenty (20) years from the date of Project Completion.

Section 6.4 Common Areas

During the Affordability Period, Development Owner agrees that any common areas, including, without limitation, any laundry or community facilities on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for use by the general public.

Section 6.5 Rent Limitations

- a. Rent Limitations for Extremely and Very Low-Income Families. The maximum monthly rent charged by Development Owner for Qualifying Units occupied by Extremely Low-Income and Very Low-Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(b) as may be amended or modified from time to time. In general, the tenant's portion of rent, plus an allowance for utilities, plus rental assistance payments, cannot exceed the Low HOME rent limits. All Qualifying Units occupied by Very Low-Income Families must be rented at the Low HOME Rents as defined under 24 CFR §92.252, as may be amended or modified from time to time. All Qualifying Units occupied by Extremely Low-Income Families shall also satisfy 24 CFR §92.252, and must be rented at a gross rent limit that does not exceed thirty percent (30%) of the income limitation imputed using one (1) person for Units with no separate Bedrooms and one and a half (1.5) persons per Bedroom of all other Units pursuant to Section 42(g)(2)(A) and (B) of the Internal Revenue Code, where the combined tenant paid portion of the rent and applicable Utility Allowance does not exceed said limit.]
- b. Rent Limitations for Low-Income Families. The maximum monthly rent charged by Development Owner for Qualifying Units occupied by Low-Income Families other than Very Low-Income Families and Extremely Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(a), as may be amended or modified from time to time. In general, the tenant's portion of rent, plus an allowance for utilities, plus rental assistance payments cannot exceed the High HOME rent limits. All Qualifying Units occupied by Low-Income Families may be rented at the High HOME Rents as defined under 24 CFR §92.252, as may be amended or modified from time to time.

Section 6.6 Income Determination

The Development Owner is required to determine that all tenants meet the Occupancy Requirements in Section 6.1 of this Contact, in accordance with the procedures set forth in 10 TAC §10.611 and the HOME Regulations or as otherwise determined by the Department, as may be amended from time to time. Moreover, Development Owner must maintain record of all Income Determinations in accordance with 10 TAC §10.612 and the HOME Regulations or as otherwise determined by the Department, and as provided herein:

- a. The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit complies with the requirements for Extremely Low Income Families or Very Low Income Families or Low Income Families shall be made by Development Owner prior to admission of such family or individual to occupancy in a Qualifying Unit or a HOME Match-Eligible Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit or a HOME Match-Eligible Unit). Thereafter, such determinations shall be made by Development Owner at least annually.
- b. If the Annual Income of a tenant which previously was classified as Very Low Income or Extremely Low Income Families shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed eighty percent (80%) of AMI (the applicable income limit for Low Income Families), the Unit shall continue to be counted as occupied by a Qualified Tenant or a tenant in a HOME Match-Eligible Unit during such family's or

individual's continuing occupancy of such Unit, and the Development Owner shall not be considered out of compliance with the occupancy requirements of Section 6.1 of this Contract, provided Development Owner shall hold the next available Unit available for occupancy by Very Low Income Families or as otherwise may be necessary to comply with the occupancy requirements of Section 6.1 of this Contract.

- c. If the Annual Income of a tenant which previously was classified as Extremely Low Income Families, Very Low Income Families or Low Income Families shall be determined upon reexamination to exceed eighty percent (80%) of AMI (the applicable income limit for Low Income Families), the Unit occupied by such family or individual shall continue to be counted as occupied by a Qualified Tenant or a tenant in a HOME Match-Eligible Unit during such family's or individual's continuing occupancy of such Unit and the Development Owner shall not be considered out of compliance with the occupancy requirements of Section 6.1 of this Contract, provided (A) such family or individual pays as rent thirty percent (30%) of such family's or individual's Monthly Adjusted Income, as recertified, except that tenants of Qualifying Units or a tenant in a HOME Match-Eligible Unit, where the Unit has also been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. §42) ("**Section 42**") must pay rent governed by Section 42; and (B) Development Owner shall hold the next available Unit available for occupancy by Extremely Low Income Families, Low Income Families or Very Low Income Families, whichever is necessary to comply with the occupancy requirements of Section 6.1 of this Contract.
- d. If the initial determination made in Section 6.6(a) of this Contract results in such family or individual exceeding the applicable income limit, such family or individual shall not be considered a Qualified Tenant.
- e. Development Owner shall be responsible for determination of the Annual Income and family composition of Qualified Tenants or tenants in a HOME Match-Eligible Unit at initial occupancy of a Unit, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, based on information collected, verified and certified by Development Owner, in accordance with procedures set forth in 10 TAC §10.611 or as otherwise required by the Department.

- f. As a condition of admission to occupancy of a Qualifying Unit or a HOME Match-Eligible Unit, Development Owner shall require the head of household and other such household members as it designates to execute a Department approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Development Owner and to the Department such information as Development Owner or Department determines to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Contract.
- g. Development Owner shall not be deemed to be in violation of this Section 6.6 of the Contract if, in determining Annual Income and family composition of a Qualified Tenant or a tenant in a HOME Match-Eligible Unit, (i) Development Owner has relied in good faith upon information which is supplied to Development Owner by the tenant, (ii) Development Owner has no reason to believe such information is false, and (iii) Development Owner complied with all requirements of the Department with respect to verification of household income and family composition.
- h. Development Owner shall make a determination regarding current student status at least annually in accordance with 10 TAC §10.612(b)(2) for both Qualifying Units and HOME Match-Eligible Units.

Section 6.7 Lease Provisions

- a. Development Owner shall meet the applicable requirements of 10 TAC §10.613 related to Lease Requirements for at least those tenant leases entered into with Qualified Tenants or tenants of a HOME Match-Eligible Unit during the Affordability Period. Moreover, any such lease must also contain provisions consistent with the State Multifamily Rules, HOME Regulations as applicable to the Qualified Unit or HOME Match-Eligible Unit, and the rent and income requirements provided in Section 6.6 and this Section 6.7 of the Contract. Provisions prohibited under the HOME Regulations shall not be permitted in any such lease during the Affordability Period, whichever is longer.
- b. All tenant leases entered into with the Qualified Tenants or tenants in HOME Match-Eligible Units during the Affordability Period, whichever is longer, shall be in writing and for one (1) year, unless mutually agreed upon by Development Owner and the tenant, and must contain provisions where each individual tenant:
 - i. certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and in connection therewith, agrees to execute an Income Certification form prescribed by the Department; and
 - ii. agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of tenancy, tenant will comply promptly with all requests for information with respect thereto from Development Owner or the Department, and that

tenant's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of tenant's tenancy and constitute cause for immediate termination thereof.

- c. All tenant leases entered into with the Qualified Tenants or tenants in HOME Match-Eligible Units during the Affordability Period shall be supplemented and amended by an addendum to lease in a form prescribed by the Department.
- d. Development Owner may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violations of the terms and conditions of the lease; violation of applicable federal, state, or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy for a Qualified Unit or HOME Match-Eligible Unit, the Development Owner must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination or nonrenewal.
- e. Tenant leases entered into with Qualified Tenants or tenants in HOME Match-Eligible Units during the Affordability Period shall not contain provisions prohibited by 24 CFR §92.253.

Section 6.8 Fair Lease and Grievance Procedure; Tenant Participation

Development Owner shall maintain and abide by the fair lease and grievance procedures approved by the Department and shall have any changes in said procedures approved by the Department prior to the effective date of said changes.

Section 6.9 Certification by Development Owner

Development Owner shall, at least annually during the Affordability Period, or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms, and provisions of this Contract and a report on the financial condition of the Development. The certification will also include statistical data relating to persons with special needs, race, ethnicity, income and fair housing opportunities and other information requested by the Department.

Section 6.10 Maintaining Affordability

It is the Development Owner's responsibility to ensure that the affordability of the Property shall remain in place for the entire Affordability Period. In the event that the affordability will not be maintained during the Federal Affordability Period, Development Owner will be required to repay the outstanding balance to the Department. Nothing herein shall serve to waive, modify, supersede, abridge, suspend, or otherwise limit Development Owner's obligation to cause the Property to be operated in compliance with applicable Federal requirements for the entirety of the Federal Affordability Period required under the LURA, regardless of the status of the Loan, including any situation in which it has been prepaid or discharged.

Section 6.11 Additional Use and Amenities Requirements

During the Affordability Period, Development Owner agrees that the Property will have the amenities specified in, and as certified by the execution of, the Additional Use Requirements; Amenities Requirements attached hereto as Addendum C and incorporated herein for all relevant purposes, in accordance with the Qualified Allocation Plan.

Section 6.12 Written Policies and Procedures

Development Owners shall maintain written documentation of policies and procedures required by the Uniform Multifamily Rules, as may be amended from time to time. Said policies and related documentation must be made available in the leasing office or wherever applications are taken.

Section 6.13 Tenant File Requirements

At initial occupancy and periodically thereafter throughout the Affordability Period or Contract Term, whichever is longer, Development Owner must create and maintain a file that, at a minimum, contains tenant file information, leases and certifications required under and in accordance with the Uniform Multifamily Rules, as may be amended from time to time.

Section 6.14. Veteran Identification in Tenant Lease Applications

The tenant lease applications must provide a space for applicants to indicate if they are a veteran as required by Section 434.212 of the Texas Government Code. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>."

SECTION VII. REPRESENTATION AND WARRANTIES

Section 7.1 Department's Representations

- a. It is expressly understood and agreed by the Parties hereto that Department's obligations hereunder are contingent upon the full and satisfactory performance by Development Owner of the activities herein described and the actual receipt by Department of adequate federal funds to meet Department's liabilities under this Contract. If adequate funds are not available to make payments under this Contract, Department shall notify Development Owner in writing within a reasonable time after such fact is determined. In that event, this Contract shall terminate and neither party shall have any further rights or obligations hereunder.
- b. Funds provided under this Contract may not be used for payment of prohibited activities and costs and Department shall not be obligated to pay Development Owner for any prohibited costs incurred by Development Owner, as set forth in -24 CFR §§92.205-92.214, 24 CFR Part 91, the Consolidated Plan, 24 CFR Part 570, 2 CFR Part 200; as otherwise federally required or identified in the NOFA, listed as an ineligible cost in 10 TAC §13.3(e), or as provided in any future rulings or determinations of HUD.

- c. Department shall not be obligated to pay to Development Owner for any costs incurred by Development Owner or for any performances rendered by Development Owner which are not strictly in accordance with the terms of the Contract, including the terms of this Contract as well as the exhibits and addendums attached hereto and incorporated herein for all relevant purposes.
- d. With the exception of authorized pre-award costs referenced below, the Department shall not be obligated to pay for costs incurred or performances rendered by Development Owner before the Effective Date of this Contract or after the Development Period and shall further not be obligated to pay for any costs incurred within the Development Period and not billed to Department within sixty (60) days after the Development Period unless otherwise agreed in writing. Department authorized pre-award costs for predevelopment costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred not more than twenty-four (24) months before the Effective Date of this Contract if the costs are in accordance with -24 CFR §92.212.

Section 7.2 Development Owner's Representations

- a. Department is relying on the accuracy of all information, representations and documents submitted by Development Owner in connection with its Application in issuing a commitment of funds under this Contract. By execution and acceptance of this Contract, Development Owner agrees to perform all activities in accordance with the provisions herein including the certifications provided herein and attached hereto as exhibits, all such exhibits incorporated herein for all relevant purposes, the assurances, certifications, and all other statements made by Development Owner in its Application. Development Owner represents and warrants to Department that there has been no material adverse change to Development Owner's financial status or any change in Development Owner's organizational structure, including the makeup of Development Owner's board of directors, if any. DEPARTMENT MAY TERMINATE THIS CONTRACT IF ANY INFORMATION RELATIVE TO THIS TRANSACTION HAS BEEN OR IS MISREPRESENTED BY DEVELOPMENT OWNER. Department may also terminate this Contract if there is any adverse change with respect to Development Owner's representations in the Application or with respect to the Property. If Development Owner or Department is unable or unwilling to comply with any law, state or federal, or any governmental regulations which affect this transaction, then this Contract shall terminate. The Department, in its sole discretion, may terminate this Contract for any failure of the Development Owner to comply with any terms within this Contract.
- b. Development Owner represents and warrants that Development Owner possesses the legal authority to enter into this Contract, to receive funds authorized by this Contract, and to perform the services Development Owner has obligated itself to perform under this Contract.
- c. Development Owner does hereby represent and warrant that the person(s) signing and executing this Contract on behalf of Development Owner is duly authorized by Development Owner to execute this Contract on behalf of Development Owner and to validly and legally bind Development Owner to all the terms, performances, and provisions of this Contract.

- d. Development Owner does hereby represent and warrant that neither the Development Owner nor any of its principals are presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from participation in this transaction of the Multifamily Direct Loan or HOME Program by any federal department or agency.
- e. Development Owner shall not employ, award contracts to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD on the Exclusions Extract on SAM.gov and/or the Department. In addition, Department shall have the right to suspend or terminate this Contract if Development Owner is debarred, suspended, proposed for debarment under 48 CFR Part 9, or is otherwise ineligible from participating in the Direct Loan Program by HUD or the Department. Development Owner acknowledges and agrees that this Section 7.2 of the Contract specifically includes, but is not limited to, consultants hired by Development Owner to assist Development Owner in any aspect relative to the activities of this Contract.
- f. Development Owner represents and warrants that before it begins any work under this Contract, Development Owner (1) has a fully executed and effective Information Security and Privacy Agreement (“ISPA”) with the Department, as required by 10 TAC §1.24, or (2) will execute and submit to the Department an ISPA in accordance with instructions found on the Department’s homepage at the “Information Security and Privacy Agreement” link.
- g. Development Owner represents and warrants that it will incorporate all applicable provisions from this Contract into its agreements with its partners, contractors, and other impacted parties.

Section 7.3 Intentionally deleted.

Section 7.4 No Conflict or Contractual Violation

To the best of Development Owner's knowledge, the execution and acceptance of this Contract and Development Owner's obligations hereunder:

- a. will not violate any contractual covenants or restrictions (A) between Development Owner or any third party or (B) affecting the Property;
- b. if Development Owner is other than an individual, will not conflict with any of the instruments that create or establish Development Owner's authority;
- c. will not conflict with any applicable public or private restrictions;
- d. do not require any consent or approval of any public or private authority which has not already been obtained; and
- e. are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Development Owner, without regard to capacity, (B) any

person with whom Development Owner may be jointly or severally liable, or (C) the Property or any part thereof.

Section 7.5 Prior Warranties, Representations, and Certifications

All warranties, representations and certifications made and all information and materials submitted or caused to be submitted to the Department in connection with the Development are true and correct, and there have been no material changes in or conditions affecting any of such warranties, representations, certifications, materials or information prior to the effective date hereof.

Section 7.6 Reserve Account

Development Owner covenants that the deposits to the Reserve Account required under Section 8.9 of this Contract, if applicable, and the repairs and maintenance of the Development required under Section 8.9 of this Contract, if applicable, fulfill and comply with the requirement of Section 2306.186 of the State Act and the implementing regulations at 10 TAC §10.404. This Section 7.6 of the Contract does not apply to a Property for which a Development Owner is required to maintain a reserve account under any other provision of federal or state law.

Section 7.7 Conflict of Interest

- a. If the Development Owner is the owner, developer, or sponsor of HOME-assisted housing, Development Owner must comply with the 24 CFR §92.356(b)-(f). No owner, developer or sponsor of HOME-assisted housing, including their officers, employees, agents, consultants or elected or appointed officials may occupy a Qualifying Unit or HOME Match-Eligible Unit in a development, with the exceptions of an individual living in a Qualifying rental housing development where said individual is a project manager or maintenance worker in that development where all the Units are Qualifying Units or HOME Match-Eligible Units.
- b. None of the funds provided under this Contract may be paid to an entity or organization that provides down payment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in conjunction with the sale of specific housing acquired with funds provided under this Contract.

Section 7.8 Political Aid and Legislative Influence Prohibited

- a. None of the funds provided under this Contract shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any state official or employee from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information.
- b. No funds provided under this Contract may be used directly or indirectly to fund or support candidates for the legislative, executive, or judicial branches of government of the State of Texas or the government of the United States.

- c. None of the funds provided under this Contract shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award governed by the Byrd Anti-Lobbying Amendment (31 U.S.C. §1352 *et seq.*) as the Development Owner and each of its tiers have certified by their execution of the "Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements" attached hereto as Addendum A and incorporated herein for all relevant purposes.

Section 7.9 Certification Regarding Undocumented Workers

Pursuant to Chapter 2264 of the State Act, by execution of the Contract, Development Owner hereby certifies that the Development Owner, or a branch, division or department of Development Owner does not and will not knowingly employ an undocumented worker, where undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Development Owner, or a branch, division, or department of Development Owner is convicted of a violation under 8 U.S.C. §1324a(f), Development Owner shall repay the amount of the public subsidy with interest, at the rate of five percent (5%) per annum, not later than the one hundred twentieth (120th) day after the date Department notifies Development Owner of the violation.

Section 7.10 Limitation on Abortion Funding

- a. Pursuant to Chapter 2272 of the Texas Government Code, to the extent allowed by federal and state law, the Department may not enter into this Contract with an "abortion provider" or an "affiliate" of an abortion provider, as said terms are defined thereunder, if funds under this Contract are appropriated from state or local tax revenue.
- b. By execution of this Contract, the Development Owner hereby certifies that, as a condition of receipt of any funds under this Contract from state or local tax revenue, it is eligible to receive said funds, and that it will not utilize said funds in any way contrary to this Section 7.10 of the Contract during the Contract Term. Development Owner further acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

SECTION VIII. CONSTRUCTION REQUIREMENTS, SCHEDULE & INSPECTION

Section 8.1 Commencement of Construction

Construction must commence no later than twelve (12) months from the Effective Date of this Contract in accordance with the Multifamily Direct Loan Rule. At the sole discretion of Department, if Development Owner has not commenced construction within twelve (12) months from the Effective Date of this Contract, this Contract may be terminated pursuant to the Multifamily Direct Loan Rule, and any disbursed funds must be repaid. Development Owner may petition the TDHCA Board to have the Contract reinstated in accordance with Section 1.7 of the Administration Rules.

Section 8.2 Payment and Performance Bonds

If the Loan is in a first lien position during the construction period, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

Section 8.3 Construction Standards

Each Unit must, at a minimum, meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies and will adhere to all state and local codes, ordinances, and standards. Pursuant to the State Multifamily Rules, the 2015 International Existing Building Code ("**IEBC**") or International Building Code ("**IBC**"), as applicable, will apply should the IEBC be more restrictive than local codes, or local building codes not exist. Regardless, all applicable property standards required in accordance with the HOME Regulations shall apply, in addition to the property and construction requirements under 10 TAC §10.621 and 10 TAC §13.9. The Property must also meet disaster mitigation construction requirements as outlined in Section 8.10 of this Contract, and the Accessibility standards as outlined in Section 6.2 of this Contract.

Section 8.4 Right of Inspection and Access

Department representatives, agents, and contractors shall have the right to review the plans and specifications and to inspect the Improvements periodically during and after construction. Subject to the rights of tenants under residential leases, Development Owner will permit the Department, its agents, employees and representatives, and any interested Governmental Authority, during business hours, to enter upon and inspect the Development and all materials to be used in the construction thereof and to examine and copy all of Development Owner's books, records, contracts and bills pertaining to the Development. Development Owner will also cooperate and cause all Contractors to cooperate with the Department and its agents, employees and representatives during such inspections; provided, however, nothing herein shall be deemed to impose upon the Department any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections.

Section 8.5 Notice to Proceed

Development Owner must receive, as applicable, confirmation from HUD indicating that HUD received all required pre-construction Davis Bacon related documentation from the Development Owner

Section 8.6 Inspections

Development Owner shall be required to adhere to all of the following notice and inspection requirements.

- a. Draw Inspection Contractor. Development Owner or lender (if other than Department), shall retain the services of a third-party licensed architect or engineer to perform construction progress inspections, approve the percentage of work completed in accordance with the plans and specifications, and certify as to the corresponding dollar amount of the Contractor's application and certificate for payment under the terms of the Loan.

- b. Mid-Construction Inspection. The Development Owner must have a mid-construction development inspection performed to confirm that work is being done in accordance with the applicable codes, the construction contract and the construction documents. A mid-construction development inspection request must be sent to the Department once the Development has met or exceeded twenty-five percent (25%) Construction Completion in accordance with the Multifamily Direct Loan Rule.

- c. Final Inspection and Clearance. The Development Owner must have a Final Development Inspection performed after Construction Completion. The Final Development Inspection request must be sent to the Department within twenty-four (24) months of the Loan Closing Date. Evidence of Construction Completion must be submitted within thirty (30) days of completion and shall be provided in a format prescribed by the Department to the Compliance Division. The clearance of deficiencies identified in the final inspection letter is required for Developments not layered with Housing Tax Credits in order to release the final draw for funds. The Closed Final Development Inspection Letter, including that all deficiencies identified in the final inspection letter have been corrected, must be received by Project Completion. Extensions of any of the above time periods may only be made for good cause and approved by the Department if commencement of construction was timely.

Section 8.7 Site Inspection/Monitoring

The Loan is subject to a satisfactory inspection of the Property by the Department. All inspections must be conducted in accordance with the State Multifamily Rules. Department reserves the right, from time to time, to carry out field inspections and desk reviews to ensure compliance with the requirements of the Loan Documents. After each monitoring visit, Department shall provide Development Owner with a written report of monitor's findings. If the monitoring reports note deficiencies in Development Owner's performance under the terms of any of the Loan Documents, the monitoring report shall include requirements for the timely correction of such deficiencies by Development Owner. Failure by Development Owner to take the action specified within the time period specified in the monitoring report may be considered an event of default under this Contract and the Loan Documents and may be cause for suspension, termination, or repayment of the funds under this Contract.

Section 8.8 Construction Completion

- a. Construction Completion. Construction Completion of the Development must be achieved, by the end of the applicable Development Period, but in no event later than thirty-six (36) months from the Loan Closing Date.

- b. Default. Failure to complete construction of the Property within four (4) years of the Effective Date of this Contract may be considered a default under the Loan, cause for termination of this Contract, and may result in the Development Owner having to repay any funds loaned to Development Owner or invested in the Property by the Department.

Section 8.9 Reserve Accounts for Repairs (Replacement Reserve Account)

Development Owner shall create a reserve for any necessary repairs for the Property by depositing (1) not less than Two Hundred Fifty and No/100 Dollars (\$250.00) per Unit per year for newly constructed

or reconstructed Units, or (2) the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review Report ("SCR") in conformance with Subchapter D of the Qualified Allocation Plan (relating to Underwriting and Loan Policy)

Section 8.10 Third Party Scope of Work and Cost Review

Development Owner shall contract for a third-party physical needs assessment, specifically a SCR in accordance with TAC §11.205 and 10 TAC §11.306, at appropriate intervals that are consistent with the first lien lender requirements. If the Department is the first lien lender or said third-party physical needs assessment/SCR is not required by the first lien lender, Development Owner shall contract with a third party to conduct a physical needs assessment/SCR at least once during each five (5) year period beginning the eleventh (11th) year after the Effective Date of this Contract. Development Owner shall submit the third-party needs assessment to the Department as well as any response to the assessment, and repairs made in response, and information on any necessary changes to the required reserve based on the assessment within thirty (30) days of completion of the SCR, as such term is defined in the State Multifamily Rules. The Department may complete the necessary repairs if Development Owner fails to do so and Development Owner shall pay for those repairs directly or through a reserve account. If the Department is notified of health and safety violations in the report, the Department may complete the repairs and pay for them through a reserve account. This requirement to contract with a third party to conduct a physical needs assessment is statutorily required and cannot be waived. The Department shall assess administrative penalties for Development Owner's failure to conduct the inspection, to make the identified repairs or to otherwise comply with this Section 8.9 of the Contract. The Office of the Texas Attorney General may assist in the enforcement of this section and the collection of any administrative penalties assessed hereunder.

Section 8.11 Disaster Mitigation

Pursuant to 24 CFR §92.251(a)(2)(iii), Development Owner must ensure that this Property will be constructed to mitigate the impact of potential disasters such as earthquakes, hurricanes, flooding and wildfires, in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish. Properties in Catastrophe Areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (related to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008), in accordance with the Multifamily Direct Loan Rule.

Section 8.12 Disbursement of Funds

Development Owner must comply with the requirements under the Multifamily Direct Loan Rule for a request for disbursement of HOME funds, including Developer's Fee as defined in the Qualified Allocation Plan and subject to the limitations imposed under the Multifamily Direct Loan Rule, to reimburse eligible costs incurred.

SECTION IX. CROSS-CUTTING FEDERAL REQUIREMENTS

Section 9.1 Affirmative Marketing

Development Owner shall adopt affirmative marketing procedures and requirements in accordance with the Uniform Multifamily Rules. The affirmative marketing procedures and requirements shall include, but not be limited to, those specified in 24 CFR §92.351. Development Owner shall maintain and abide by an affirmative marketing plan which shall be designed to attract tenants and employees from all racial, ethnic/national origin, sex, religion, familial status and persons with special needs groups and shall require all press releases and written materials, advertising or promoting of the Development to, when feasible, include the equal housing opportunity logo or slogan. Development Owner further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements imposed by the HOME Regulations, the NOFA, and any guidance provided by HUD or the Department, as amended from time to time.

Section 9.2 Site and Neighborhood Review

New Construction or Reconstruction of affordable housing Units must comply with the HUD Site and Neighborhood requirements of 10 TAC §13.2(12), as provided in accordance with 24 CFR §92.202 and 24 CFR §983.57(e)(2) and (3). Moreover, the site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§2000d-2000d-4), the Fair Housing Act (42 U.S.C. §3601 *et seq.*), Executive Order 11063 (3 CFR §§1959-1963 Comp., p. 652), and the implementing HUD regulations.

Section 9.3 Faith-Based Activities

Performances rendered by Development Owner under this Contract shall not involve, and funds received by Development Owner under this Contract shall not be used, in support of any explicitly religious activity, such as worship, religious instruction, or proselytization. Development Owner shall comply with the regulations promulgated by the HUD at 24 CFR §92.257.

Section 9.4 Labor Standards

All laborers and mechanics (except laborers and mechanics employed by Development Owner while acting as the principal Development Owner of the Development) employed in construction of certain developments assisted by the Department shall be paid wages at rates not less than those prevailing on similar developments in the locality, if such a rate category exists, or for a Development assisted by the Department under this Contract containing more than twelve (12) HOME-assisted Units, the appropriate rate as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §§3141-3144 and 3146-3148). Contracts involving such employment shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708) as supplemented by the Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5), Copeland (Anti-Kickback) Act (40 U.S.C. Sec. §3145 *et seq.*) and 24 CFR Part 70 (with regards to volunteers). Construction contractors and subcontractors must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs, as applicable.

Section 9.5 Voluntary Disclosure Notice and Displaced Persons

- a. Voluntary Disclosure Notice. Development Owner must comply with the voluntary disclosure notices required under the Uniform Relocation Act and Real Property Acquisition Policies Act of 1970 (“URA”) (42 U.S.C. §§4201-4655) and its implementing regulations at 49 CFR Part 24.
- b. Displaced Persons. In the event there are any Displaced Persons, including families, individuals, businesses, nonprofit organizations, and farms, in accordance with 24 CFR §92.353(a) as a result of any buildings, structures or real property being acquired, rehabilitated, or reconstructed with HOME funds, Development Owner shall comply with the requirements and provisions of the Relocation Plan, as defined in 10 TAC §13.2(10) and in some developments, Section 104(d) of the Housing and Community Development Act of 1974 (the “**Barney Frank Amendments**”), as amended and set forth in Subpart C of 24 CFR Part 42.

Section 9.6 Environmental

- a. The environmental effects of each activity carried out with funds provided under this Contract must be assessed in accordance with the provisions of the Multifamily Programs Procedures Manual and the National Environmental Policy Act of 1969 (“NEPA”) (42 U.S.C. §432 *et. seq.*), 24 CFR §92.352, and the related activities listed in HUD’s implementing regulations at 24 CFR Parts 50, 51, 55 and 58 (“NEPA regulations”). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §11.305 and complying with NEPA and the NEPA regulations, including screening for vapor encroachment following American Society for Testing and Materials (“ASTM”) 2600-10. No entity in the ownership structure may close on the Land or commit any choice limiting activities as defined by 24 CFR Part 58 between the time of application and environmental clearance. The Department will not close a loan or federally commit funds to an activity before the completion of environmental review, including the requirements of 24 CFR §58.6, and the provision of written clearance.
- b. A non-governmental entity is not delegated authority to become a Responsible Entity (“RE”) and make environmental determinations and therefore shall assist Department in completing the environmental review by providing all relevant documentation needed to perform an environmental review, carrying out required mitigating measures, and selecting an alternate property for assistance as needed.
- c. Development Owner is strongly encouraged to attend training for environmental assessment. The assessments must be in accordance with 10 TAC §11.305 and satisfactory to Department. This Contract is conditional in nature and does not grant Development Owner legal claim to any funds for a specific development or site until the environmental review process is approved by Department. The agreement to provide funds to the Development is conditional on Department’s or Development Owner’s determination to proceed with, modify, or cancel the Development based on the results of a subsequent environmental review.
- d. Violations of any Environmental Laws will be reported HUD (the federal awarding agency) and the Regional Office of the Environmental Protection Agency (“EPA”).

Section 9.7 Flood Hazard

In accordance with 10 TAC §11.101(a) and 10 TAC §11.302(g) and Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106 *et. seq.*), funds provided under this Contract may not be used in connection with acquisition or Rehabilitation of a development located in an area identified by the Federal Emergency Management Agency ("**FEMA**") as having special flood hazards, unless the locality in which the site is located is participating in the National Flood Insurance Program ("**NFIP**") or less than a year has passed since FEMA notification regarding such hazards and flood insurance for the buildings that are located in the 100-year Floodplain and have not been elevated above the Floodplain and for the tenant's contents in those same buildings is obtained as a condition of approval of the Contract. Development Owner must determine if the locality participates in the NFIP during the preliminary stages of the environmental clearance process.

Section 9.8 Lead-Based Paint

Development Owner shall comply with 24 CFR §92.355. The Development is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Development Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule (40 CFR Part 745) and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

Section 9.9 Section 3 Compliance

- a. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. §1701u) ("**Section 3**"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons including persons who are recipients of HUD assistance for housing, with preference for both targeted workers living in the service area or neighborhood of the Development and Youthbuild participants, as defined at 24 CFR Part 75 ("**Section 3 Regulations**").
- b. The Parties agree to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Parties certify that they are under no contractual or other impediment that would prevent them from complying with the Section 3 Regulations.
- c. The Development Owner agrees to send to each labor organization or representative of workers with which the Development Owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Development Owner's commitments under this section of the Contract, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire;

(ii) availability of apprenticeship and training positions; (iii) qualifications for each; (iv) name and location of the person(s) taking applications for each of the positions; and (v) the anticipated date the work shall begin.

- d. The Development Owner agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in Section 3 Regulations. The Development Owner will not subcontract with any subcontractor where the Development Owner has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.
- e. The Development Owner will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Development Owner's obligations under Section 3 Regulations.
- f. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

Section 9.10 Equal Employment Opportunity Program

The Development Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

Section 9.11 Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity

The Development Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Contract. The Development Owner shall follow Title VI, "Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking" of the Violence Against Women Reauthorization Act of 2013 (42 U.S.C. §13925 *et seq.*) as implemented by HUD at 24 CFR Part 5, Subpart L, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.*) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255), as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*), Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107, The Fair Housing Act (42 U.S.C. §3601 *et seq.*), as implemented by HUD at 24 CFR Part 100-115, 24 CFR §92.202 and §92.250, and 24 CFR §5.105(a). By execution of this Contract, Development Owner agrees to

affirmatively further fair housing by using funds in a manner that follows the "State of Texas Analysis of Impediments" and by maintaining records in this regard.

Section 9.12 Minority/Women's Business Enterprise

The Development Owner will use its best efforts for minority outreach to afford minority business enterprises and women's business enterprises the maximum practicable opportunity to participate in the performance of this Contract and must prescribe procedures acceptable to HUD for a minority outreach program under Executive Orders 11625, 12432 and 12138 and its implementing regulations at 2 CFR §200.321. The Development Owner may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.

Section 9.13 Drug-Free Workplace

The Development Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, *et seq.*), the regulations promulgated thereunder including, without limitation, 2 CFR Parts 182 and 2429.

Section 9.14 Limited English Proficiency

Development Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000 reprinted at 65 FR 50121, August 16, 2000 "Improving Access to Services for Persons with Limited English Proficiency" ("LEP") at 67 FR 41455. To ensure compliance, the Development Owner must take reasonable steps to ensure that LEP persons have meaningful access. Meaningful access entails providing language assistance services, including oral and written translation.

Section 9.15 Procurement of Recovered Materials

Development Owner and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition where the purchase price exceeds Ten Thousand and No/100 Dollar (\$10,000.00) or the value of the quantity acquired by the preceding fiscal year exceeded Ten Thousand and No/100 Dollar (\$10,000.00), procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines.

Section 9.16 Installation of Broadband Infrastructure

Development Owner and its contractors must comply with 24 CFR Part 5 and 24 CFR §92.251(a)(2)(vi) and §92.251(b)(1)(x), unless provided a written exemption by the Department in writing before Loan Closing Date, and install broadband infrastructure capable of providing access to Internet connections in the Units that meets the definition of advanced telecommunications capability determined by the Federal Communications Commission under Section 706 of the Telecommunications Act of 1996 (47 U.S.C. §1302 *et seq.*).

Section 9.17 Prohibited Expenditures on Certain Telecommunications and Video Surveillance Services and Equipment

- a. General. Pursuant to 2 CFR §200.216, Development Owner and its contractors are prohibited from using HOME funds under this Contract for equipment, services, or systems that use the following covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system in accordance with Section 889 of Public Law 115-232 (National Defense Authorization Act 2019):
- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. Subcontracts. Developer Owner must incorporate this prohibition in any contract and require its contractors to incorporate this requirement into any contract

Section 9.18 Prevention of Trafficking

Development Owner and its contractors must comply with Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. §7104 *et seq.*). If Development Owner or its contractor or subcontractor engages in, or uses labor recruiters, brokers or other agents who engage in any of the prohibited activities under Section 106(g) of the Trafficking Victims Protection Act of 2000, Department may terminate this Contract and Development Owner hereby agrees and acknowledges that upon termination, Development Owner's rights to any funds shall be terminated.

SECTION X. RECORDS AND REPORTING

Section 10.1 Records

Development Owner must establish and maintain sufficient records required under the Uniform Multifamily Rules, as determined by the Department. Development Owner agrees that the Department, Comptroller General of the United States, or any of their duly authorized representatives, shall have the right to access and examine all books, accounts, records, reports, files, and other papers or property belonging to or in use by Development Owner pertaining to this Contract. All records pertinent to this Contract shall be retained by Development Owner for a period of five (5) years following the date of HUD's close-out of the Department's program funding year in accordance with the Administration Rules

and 24 CFR §92.508(c), and as further described in Section 10.6 of this Contract. The Department will notify the Development Owner of the date HUD closed out the Department's grant. The Development Owner shall continue to retain all such records for an additional period of five (5) years thereafter with the following exceptions:

- a. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- b. Records covering displacement and acquisitions must be retained for five (5) years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Development have received the final payment to which they are entitled in accordance with the Federal HOME Regulations.
- c. For rental housing developments, records must be retained for five (5) years after the development completion date; except that records of individual tenant income verifications, development rents and development inspections must be retained for the most recent five (5) year period after the tenant moves out, until five (5) years after the State Affordability Period terminates, in accordance with Section 10.6 of this Contract and as provided in the LURA.

Section 10.2 Reporting Requirements

- a. Development Owner shall submit to Department reports required under the Qualified Allocation Plan and the Uniform Multifamily Rules and such other reports on the operation and performance of this Contract as may be required by Department, including but not limited to the reports specified in this Section 10.2 of this Contract. Development Owner shall provide Department with all reports necessary for Department's compliance with the Federal HOME Regulations.
- b. In addition to the limitations on liability otherwise specified in this Contract, it is expressly understood and agreed by the Parties hereto that if Development Owner fails to submit to the Department in a timely and satisfactory manner any report required by this Contract, the Department may, in its sole discretion, determine that the failure constitutes default under this Contract, the Loan Documents or HOME Regulations, and may pursue all available remedies.
- c. In addition to other reports, the Development Owner shall provide reports to the Department regarding program activities to evidence progress of performance in accordance with the requirements of the Federal Act, State Act, Consolidated Plan, HOME Regulations, and this Contract.

Section 10.3 Reports

Development Owner shall deliver to the Department:

- a. A Construction Status Report or Unit Status Report, as applicable, within ten (10) days after the last day of each quarter in each fiscal year, or as requested by the Department. The Department may require electronic submission of the applicable Report.
- b. From time to time and promptly upon each request, such Project Documents including data, certificates, reports, statements, documents, or further information regarding the assets or the business, liabilities, financial position, projections, results of operations, or business prospects of Development Owner or such other matters concerning Development Owner's compliance with the HOME Regulations as the Department may reasonably request in accordance with this Contract during the Contract Term or Affordability Period, whichever is longer, or in accordance with the LURA during the LURA Term; or as necessary to assist the Department in meeting its recordkeeping and reporting requirements during the applicable period, including, without limitation, the following:
 - i. Records that demonstrate the Development meets the Property Standards and applicable requirements under 24 CFR §92.251.
 - ii. Records that demonstrate the Development meets the requirements under 24 CFR §92.252 for the Contract Term or Affordability Period, whichever is longer.
 - iii. Records that demonstrate compliance with the requirements of 24 CFR §92.253 related to tenant protections.
 - iv. Records that indicate whether the Development is mixed-income, mixed-use, or both.
 - v. Other federal requirements records:
 1. Equal opportunity and fair housing records containing:
 - a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.
 - b. Documentation of actions undertaken to meet the requirements of 24 CFR Part 135, which implements Section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. §1701u).
 - c. Documentation and data on the steps taken to implement the Development Owner's outreach programs to minority-owned and female-owned businesses pursuant to Executive Orders 11625, 12432 and 12138 and its implementing regulations at 2 CFR §200.321, including data indicating the racial, ethnic or gender

character of each business entity receiving a contract or subcontract of \$25,000.00 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of Development Owner's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

- d. Documentation of the actions the Development Owner has taken to affirmatively further fair housing.
2. Records indicating the affirmative marketing procedures and requirements under 24 CFR §92.351.
3. Records that demonstrate compliance with environmental review requirements in 24 CFR §352, as well as 24 CFR Part 58 .
4. Records which demonstrate compliance with the requirements in 24 CFR §92.353 regarding displacement, relocation, and real property acquisition, including the project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 24 CFR §92.353(c)(2)(i)(A) moving into the property on or after the date described in 24 CFR §92.353(c)(2)(i)(A), and occupying the Property upon completion of the Development.
5. Records demonstrating compliance with labor requirements in 24 CFR §92.354, including contract provisions and payroll records.
6. Records concerning lead-based paint under 24 CFR §92.355.
7. Records supporting requests for waivers of the conflict of interest prohibition in 24 CFR §92.355.
8. Records of certifications concerning debarment and suspension required by 24 CFR Part 24 .
9. Records demonstrating compliance with flood insurance requirement under the Federal HOME Regulations.

Section 10.4 Information and Reports Regarding the Development

Development Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department but not more frequently than once per month, (a) a statement in such reasonable detail as the Department may request, certified by Development Owner, of the leases relating to the Development, and (b) a statement in such reasonable detail as the Department may request, certified

by a certified public accountant or, at the option of the Department, by the Development Owner, of the income from and expenses of any one (1) or more of the following: (i) the conduct of any business on the Development, (ii) the operation of the Development, or (iii) the leasing of the Development or any part thereof, for the last twelve (12) month calendar period prior to the giving of such notice, and, on demand, Development Owner shall furnish to the Department executed counterparts of any such tenant leases and any other contracts and agreements pertaining to facilities located on the Property or which otherwise generate ancillary income for the Development, for the audit and verification of any such statement.

Section 10.5 Other Information

Development Owner shall deliver to the Department, at any time within thirty (30) calendar days after notice and demand by the Department, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the Department.

Section 10.6 Maintenance of Documents

All Project Documents and any other report or records which Development Owner is required to prepare or provide to the Department pursuant to this Contract or the HOME Regulations must be retained for the periods set out in the HOME Regulations, or if no specific period is set out, for five (5) years after the end of the State Affordability Period under the LURA, or as otherwise specified by law or required by the Department including but not limited to as described in Section 10.1 of this Contract. All Project Documents shall at all times be kept separate and identifiable from any other business of Development Owner which is unrelated to the Property, and shall be maintained in compliance with the applicable HOME Regulations and any other requirements of the Department, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department, HUD, or the United States Comptroller General. Development Owner agrees and acknowledges that any and all of the Project Documents are confidential in nature. Development Owner agrees not to disclose the Project Documents or any of the terms, provisions or conditions thereof, or any other information that is deemed confidential under federal law or state law related to tenants' or applicants' income, social security number, employment status, disability, or other related matters to any party outside of Development Owner's organization or to Development Owner's management company for the Development, except as otherwise expressly required in this Contract, or by the applicable HOME Regulations. Development Owner further agrees that within its organization, the Project Documents and other confidential information will be disclosed and exhibited only to those persons within Development Owner's organization whose position and responsibilities make such disclosure necessary.

Section 10.7 Public Information

Pursuant to Section 2306.6717 of the State Act, Development Owner acknowledges that Department is subject to the Texas Public Information Act under Chapter 552 of the Texas Government Code and the posting requirements for the Department's website pursuant to Section 2306.6717 of the State Act and Development Owner agrees that funds received from the Department are subject to the Texas Public Information Act and the exceptions to disclosure as provided under the Texas Public Information Act. Development Owner understands that the Department will comply with the Texas Public Information Act interpreted by judicial ruling and opinions of the Attorney General of the State of Texas. In accordance with Section 2252.907 of the Texas Government Code, Development Owner is required to make any information created or exchanged with the State of Texas pursuant to this Contract, available

in a format that is accessible by the public at no additional charge to the State of Texas. A request to the Development Owner for public information shall be communicated to the Department's contract identified in this Contract, by the close of business on the following business day after the request is received. Development Owner shall not provide to the requestor any information that was written, produced, collected, assembled, or maintained under this Contract, but shall respond to the requestor that the request has been forwarded to the Department for processing. After gathering all information that is responsive to the request, but in no event later than five (5) business days after receiving the information request, Development Owner shall send the information to the Department. Development Owner shall timely contact the Department if there will be any delay in sending the information request or responsive document to the Department.

Section 10.8 Protected Health Information

If Development Owner or its management company, employees or representatives collects or receives documentation for disability, medical records or any other medical information in the course of conducting any business on the Development, operating the Development, or leasing the Development, Development Owner and its management company, employees or representatives shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996) the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164).

SECTION XI. DEPARTMENT MONITORING; AUDITS

Section 11.1 Department Monitoring

During the Contract Term or Affordability Period, whichever is longer, Development Owner agrees to permit the Department and HUD (during any applicable Federal Affordability Period or federal recordkeeping period), or its designated representative, access to the Property for the purpose of performing Department Compliance Monitoring Procedures in accordance with Subchapter F of the Uniform Multifamily Rules. The Department or HUD will periodically monitor and audit Development Owner's compliance with the requirements of this Contract, the requirements for Reserve Account under Subchapter E of the Uniform Multifamily Rules, and any and all other Governmental Requirements, in accordance with Department Monitoring Procedures under this Contract. In conducting its compliance review, the Department and HUD will rely primarily on information obtained from the Development Owner's records and reports, findings from onsite monitoring in accordance with 10 TAC §10.618 and 10 TAC §10.803, and audit reports. The Department and HUD may also consider relevant information gained from other sources, including litigation and citizen complaints. In accordance with Section 2306.231 of the State Act, and to the extent permitted by the Federal Act and its implementing regulations, Development Owner shall reimburse the Department or HUD, as appropriate, on demand for their respective costs incurred in connection with monitoring, auditing, inspecting and examining the Development Owner's compliance with the requirements of this Contract.

Section 11.2 Not Applicable.

Section 11.3 Audits

- a. Development Owner shall submit to Department, within ninety (90) days after the end of each fiscal year, an Audit Certification Form as specified by Department for each fiscal year in which any months of the Development Owner's fiscal year overlaps a month of the Contract Period. Unless otherwise directed by Department, Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Contract, subject to the following conditions and limitations:
 - i. Development Owner shall have an audit conducted in accordance with 2 CFR Part 200, Subpart F, for any of its fiscal years included within the Contract Period specified in Section II of this Contract in which Development Owner has expenses of more than Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00), in federal financial assistance provided by a federal agency or a pass through entity in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but does not include direct federal cash assistance to individuals. The term federal financial assistance includes awards of financial assistance received directly from federal agencies, or indirectly through other units of State and local government.
 - ii. The audit required by this Section 11.3 of the Contract must cover Development Owner's entire operations and each department, agency, related entity, or establishment of Development Owner which received, expended, or otherwise administered federal funds.
 - iii. Development Owner must follow the process in 10 TAC §1.403.
- b. If the Development Owner is not subject to the single audit threshold or is not owned or controlled by an entity subject to the 2 CFR Part 200, Subpart F requirements, Department reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this Contract. Development Owner agrees to permit Department, or its authorized representative, to audit Development Owner's records and to obtain any documents, materials, or information necessary to facilitate such audit.
- c. Development Owner understands and agrees that it shall be liable to Department for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Development Owner further understands and agrees that reimbursement to Department of such disallowed costs shall be paid by Development Owner from funds which were not provided or otherwise made available to Development Owner under this Contract.
- d. Development Owner shall take all necessary actions to facilitate the performance of such audit(s) conducted pursuant to this Section 11 of the Contract as Department may require of Development Owner.
- e. All approved HOME audit reports shall be made available for public inspection within thirty (30) days after completion of the audit.

SECTION XII. DEFAULT, ENFORCEMENT AND REMEDIES

Section 12.1 Events of Default

Occurrence of one (1) or more of the following events will, at the sole election of the Department, constitute an event of default ("**Event of Default**") under this Contract:

- a. Breach of Contract. Development Owner defaults in the performance of any of its obligations under this Contract or breaches any covenant, agreement, restriction, representation or warranty set forth herein, and such default remains uncured for a period of thirty (30) calendar days after notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such thirty (30) calendar day period, unless Development Owner does not commence such correction or commences such correction within such thirty (30) calendar day period but thereafter does not diligently pursue the same to completion within such extended period).
- b. Bankruptcy. Development Owner is adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy or for reorganization shall be filed against it and it shall admit the material allegations thereof, or an order, judgment or decree shall be entered approving such petition and such order, judgment or decree shall not be vacated or stayed within sixty (60) calendar days of its entry or a receiver or trustee shall be appointed for the Development Owner or the Property, Land or any part thereof and remain in possession thereof for sixty (60) calendar days.
- c. Transfer or Sale of Property. Development Owner sells or otherwise transfers the Property, in whole or in part (except leases of individual Units for a period not to exceed two (2) years and otherwise in accordance with this Contract and Loan Documents), without the prior written consent of Department.
- d. False Representations. If any representation, statement or warranty made by Development Owner or others in, under or pursuant to any of the Loan Documents or any affidavit or other instrument executed in connection with the Loan Documents is false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Loan.
- e. Destruction or Loss of Property.
 - i. If the Property is demolished, destroyed or substantially damaged so that (in Department's judgment) it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time; or
 - ii. Development Owner fails to notify Department of the occurrence of any casualty

loss of the Property within thirty (30) calendar days from the occurrence; or

- iii. Development Owner fails to restore Property or replace Property with similar items due to casualty within a time period approved by Department not to exceed two (2) years.
- f. Change in Financial Condition. If the Department reasonably determines that the likelihood of payment of the Loan or performance of the obligations under the Loan Documents is threatened by reason of a material adverse change in the financial condition or credit standing of Development Owner or, if Development Owner is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Development Owner, or if the estate held by Development Owner in the Land is a leasehold estate, of the ground lessor.
- g. Foreclosure of Other Liens. If the holder of any lien or security interest on the Property (without hereby implying Department's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
- h. Failure to Timely Pay Loan. If Borrower fails, refuses or neglects to pay, in full, any installment or portion of the Loan as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, or at a date fixed for prepayment or otherwise, and such failure, refusal or neglect continues for a period of thirty (30) calendar days thereafter; however, if such installment or portion of the Loan becomes due and payable as a result of Department's accelerating the maturity of the Loan in accordance with the Loan Documents, the thirty (30) calendar day period set forth in this Section 12.1(h) of the Contract shall not apply to the accelerated due date.
- i. Performance of Obligations. If Development Owner fails, refuses or neglects to perform and discharge fully and timely any of the obligations under this Contract or any of the Loan Documents as and when called for and such failure, refusal or neglect is either incurable or, if curable, remains uncured for a period of thirty (30) calendar days after the earlier to occur of (i) the date Department gives written notice thereof to Development Owner or (ii) the date upon which Development Owner had actual knowledge of the obligation to be performed; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) calendar day period, no Event of Default shall be deemed to have occurred if Development Owner commences same within such thirty (30) calendar day period and thereafter diligently and continuously prosecutes the same to completion within sixty (60) calendar days after such notice or date of actual knowledge.
- j. Property Use, Occupancy and Rent. If the Development Owner fails to develop, use, maintain or rent the Property in accordance with the provisions and restrictions under Section 6 of this Contract, and as provided under and in accordance with the LURA.

- k. Merger. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas, and such is not cured prior to causing material harm to Development Owner's ability to repay the indebtedness under the Loan Documents or perform the contractual obligations hereunder and under the Loan Documents.
- l. Events of Noncompliance. If Development Owner is found to be in noncompliance for compliance monitoring purposes in accordance with the State Multifamily Rules.
- m. Information Security and Privacy Requirements. If Development Owner fails to comply with the information security and privacy requirements under 10 TAC §1.24, ensuring the security and privacy of Protected Information (as said term is defined under 10 TAC §1.24). If prior to performing any work under this Contract, Development Owner either (i) fails to have an effective, fully executed ISPA, as required by 10 TAC §1.24, on file with the Department, or (ii) fails to execute and submit to the Department an ISPA in accordance with instructions found on the Department's website at the "Information Security and Privacy Agreement" link.

Section 12.2 Debarred and Suspended Parties

By signing this Contract, Development Owner certifies that neither it nor its current principle parties are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency as provided in the Certification Regarding Debarment, Suspension and Other Responsibility Matters attached hereto as Addendum B and incorporated herein for all relevant purposes. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in the certification attached as Addendum B, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Development Owner also certifies that it will not make any award provided by this Contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Development Owner agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management ("**SAM**") at www.sam.gov and including a copy of the results in its project files. After said verification, Development Owner may decide the frequency by which it determines the eligibility of its subcontractors during the term of the subcontractor's agreement. Development Owner may subsequently rely upon a certification of a subcontractor that is not proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless Development Owner knows that the certification is erroneous. Failure of Development Owner to furnish the certification attached hereto as Addendum B or an explanation of why it cannot provide said certification shall disqualify Development Owner from participation under this Contract. The certification or explanation will be considered in connection with the Department's determination whether to continue with this Contract. Development Owner shall provide immediate written notice to Department if at any time Development Owner learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Development Owner further agrees by executing this Contract that it will include the certification provision titled "Certification Regarding Debarment, Suspension and Other Responsibility Matters" "Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusive-Subcontracts,” as set out in Addendum B, without modification, and this language under this Section 12.2 of the Contract, in all its subcontracts.

Section 12.3 Remedies

Upon an occurrence of an Event of Default, the Department, in its sole discretion may, (i) apply to any court having jurisdiction of the subject matter for specific performance of this Contract, or for an injunction against any violation of this Contract, or (ii) take any action authorized under the State Multifamily Rules, or (iii) take any and all action at law, in equity, or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Development Owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of Development Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon a default by Development Owner hereunder.

Section 12.4 Cumulative and Concurrent Remedies

Each right, power and remedy of the Department provided for in this Contract now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Contract or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one (1) or more of the rights, powers or remedies provided for in this Contract or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

Section 12.5 Purchase Options, Rights of First Refusal, and Preemptive Rights to Purchase

The Department has the option to utilize purchase options, rights of first refusal, or any other preemptive rights to purchase Property in accordance with the applicable provisions of 24 CFR §92.503 and 24 CFR §92.252 in order to preserve the affordability requirements under Section 6 of this Contract during the Federal Affordability Period or Contract Term, whichever is longer. Pursuant to Section 2306.185(f) of the State Act, Development Owner must provide written notice to the Department at least twelve (12) months before the date of any attempt to dispose of the Property or prepay any loan insured by HUD to enable the Department to attempt to locate a buyer who will conform to this Contract as well as the LURA. Development Owner further acknowledges and agrees that the LURA will be a superior restrictive covenant running with the Land, and any conveyance or sale to subsequent owners or buyers shall also be subject to the requirements under the LURA.

SECTION XIII. GENERAL PROVISIONS

Section 13.1 Independent Contractor

It is expressly understood and agreed by the Parties hereto that Department is contracting with Development Owner as an independent contractor, and that Development Owner, as such, agrees to hold Department harmless and to the extent allowed by law indemnify Department from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services to be performed by Development Owner under this Contract.

Section 13.2 Subcontracts

- a. Development Owner shall only subcontract for performance of activities described in this Contract after Development Owner has obtained the appropriate documentation verifying the subcontractor's eligibility, as specified by Department, for each such proposed subcontract. Development Owner, in subcontracting for any activities described in this Contract, expressly understands that in entering into such subcontracts, Department is in no way liable to Development Owner's subcontractor(s).
- b. In no event shall any provision of this Section 13.2 of the Contract constitute adoption, ratification, or acceptance of Development Owner's or subcontractor's performance hereunder. Department maintains the right to insist upon Development Owner's full compliance with the terms of this Contract, and by the act of approval under this Section 13.2 of the Contract, Department does not waive any right of action which may exist or which may subsequently accrue to Department under this Contract.
- c. Development Owner shall comply with all applicable federal, state, and local laws, HOME Regulations, and ordinances for making procurements under this Contract.
- d. Development Owner shall include language in any subcontract that provides the Department and HUD the authority to directly review, monitor, and audit the operational and financial performance and records of work performed under this Contract by any third-party, including subcontractors, contractors and consultants or service providers.
- e. Development Owner shall include in any subcontracts that failure to adequately perform under this Contract may result in penalties up to and including debarment from performing additional work for the Department.

Section 13.3 Underwriting Report and Amended/Revised Reports and/or Multifamily Direct Loan Budget and Sources and Uses

The final sources and uses for the Development, with respect to the eligible use of HOME funds as evidenced in the Department's Underwriting Report and Amended/Revised Reports and/or Multifamily Direct Loan Budget and Sources and Uses, attached hereto as Exhibit C, and incorporated herein for all relevant purposes, which may be updated, revised and amended from time to time. Development Owner may not use HOME funds for other unidentified or otherwise ineligible uses. Development Owner may not use other funds not reflected in Exhibit C on the Property during the Development Period, or have a project-based voucher during the Affordability Period unless reflected in Exhibit C, without prior written Department approval.

Section 13.4 Notices

All notices required or permitted to be given under this Contract must be in writing. Notice will be deemed effective three (3) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other

manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

Department: Physical Address: 221 E. 11th Street, Austin, TX 78701
Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941
Attention: Director of Multifamily Finance Division

with copy to: Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Director of Compliance

Development Owner:
Houston DMA Housing II, LLC
4101 Parkstone Heights Drive, Ste 310
Austin, TX 78746
Attention: Diana McIver

Any party may change its address for notice purposes by giving ten (10) calendar days' notice to the other Parties in accordance with this Section 13.4 of the Contract.

Section 13.5 Conflicting Agreements

Development Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Contract are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

Section 13.6 Amendments

- a. Except as specifically provided otherwise in this Contract or in the State Multifamily Rules, any changes, additions, or deletions to the terms of this Contract shall be in writing and executed by both Parties and shall comply with the amendment requirements in the State Multifamily Rules, as amended from time to time.
- b. Any changes, additions, or deletions to the terms of this Contract which are required by changes in federal or state law, or regulations, are automatically incorporated into this Contract without the requirement of a written amendment hereto, and shall become effective on the date designated by such law or regulation.

Section 13.7 Severability

If any provision of this Contract is held invalid, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be and remain in full force and effect and construed so as best to effectuate the intent of the Parties.

Section 13.8 Counterparts and Facsimile Signatures

This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or electronic transmission, and any such signature shall have the same legal effect as an original. An executed facsimile or email copy approved by the Department will be sufficient to evidence the Parties' agreement to any amendment, revision, or change to this Contract if it is made on a form provided by the Department. If any party returns a copy by facsimile machine, the signing party intends the copy of its authorized signature printed by the receiving machine to be its original signature. If any party returns a copy by email, the signing party intends the copy of its authorized signature emailed to the receiving email to be its original signature.

Section 13.9 Captions

The captions used herein are for reference purposes only and shall not define, limit, extend, or describe the scope of this Contract or the intent of any provisions hereof.

Section 13.10 Number, Gender

Whenever used herein the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 13.11 Jurisdiction

This Contract is delivered and is intended to be performed in the State of Texas.

Section 13.12 Venue

For purposes of litigation pursuant to this Contract, venue shall lie in Travis County, Texas.

Section 13.13 Litigation and Claims

- a. No action, litigation, investigation or proceeding is now pending or, to the best of Development Owner's knowledge, threatened against Development Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation or enforceability of this Contract.
- b. Development Owner shall give Department prompt notice, in writing, of the occurrence of any of the following events:
 - i. any action, including any proceeding before an administrative agency, filed against Development Owner in connection with this Contract; and
 - ii. any claim against Development Owner, the cost and expense of which Development Owner may be entitled to be reimbursed by Department.
- c. Except as otherwise directed by Department, Development Owner shall furnish promptly to Department copies of all pertinent papers received by Development Owner with respect to such action or claim.

Section 13.14 No Bankruptcy

There is not pending or, to Development Owner's best knowledge, threatened against Development Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Development Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

Section 13.15 Compliance with Applicable Law

This Contract is expressly subject to Development Owner's compliance to Department's satisfaction with all applicable laws, federal, state and local, and with all governmental regulations, rules and ordinances, as well as Department's program guidelines relating to the Loan and HOME Program, HOME Regulations, this Loan and affecting the Development, or its use, all of which may be modified or amended from time to time. Development Owner shall not violate any federal, state, or local laws, stated herein or otherwise, nor commit any illegal activity in the performance of or associated with the performance of this Contract. No funds under this Contract shall be used for any illegal activity or activity that violates any federal, state or local laws.

Section 13.16 Assignment and Assumptions of Liens

- a. Assignment This Contract is made by Department to Development Owner only. Accordingly, it is not assignable without the written consent and agreement of Department, as provided in the Multifamily Direct Loan Rule, for which consent may be withheld at Department's sole discretion.
- b. Assumption. This Loan cannot be assumed without the approval of the Department in accordance with the Multifamily Direct Loan Rule. Any request for an assumption of loan following an approval of a transfer of ownership in accordance with the Uniform Multifamily Rules must be submitted to the Department for approval.

Section 13.17 Alternative Dispute Resolution

In accordance with Section 2306.082 of the State Act, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Texas Government Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by Department's ex parte communications policy, Department encourages informal communications between Department staff and the Administrator, to exchange information and informally resolve disputes. Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Administrator would like to engage Department in an ADR procedure, the Administrator may send a proposal to Department's Dispute Resolution Coordinator. For additional information on Department's ADR policy, see Department's Alternative Dispute Resolution and Negotiated Rulemaking in the Administration Rules and the ADR Policy in the Qualified Allocation Plan.

Section 13.18 Additional Terms and Conditions

- a. General. Development Owner understands and hereby acknowledges that this Contract does not address all of the terms and conditions of the Loan and that additional terms and conditions will be required by the Loan Documents to be executed at closing on the Loan Closing Date. All information, documents and reports required must be satisfactory to Department in its sole discretion. Any change which occurs after the final acceptance of the Application and subsequent award of HOME funds by the Department, and not agreed to by the Department in writing, may result in a reduction of the Loan Amount or the termination of this Contract.
- b. Underwriting Report Conditions. Development Owner will be responsible for fulfilling all of the additional terms and conditions required within the Department Underwriting Report and Amended/Revised Reports and/or Multifamily Direct Loan Budget and Sources and Uses attached hereto as Exhibit C, as may be amended. In the event any of the conditions listed herein cause the Development Owner to become an ineligible applicant or the Development to become an ineligible awardee or recipient, Development Owner must inform the Department, and the Department reserves the right to terminate this Contract.
- c. Special Conditions.
 - i. Before execution of this Contract, Development Owner must confirm the Texas General Land Office's approval of the CDBG funding for this Property.
 - ii. Development Owner must provide the following specific environmental and mitigation measures: The City of Houston has agreed to update their prior environmental clearance (Part 58).

Section 13.19 Time is of the Essence

Time is of the essence with respect to Development Owner's compliance with all covenants, agreements, terms and conditions of this Contract.

Section 13.20 Oral and Written Agreements

- a. All oral and written agreements between the Parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.
- b. The attachments enumerated and denominated below are incorporated herein by reference for all purposes and are a part of this Contract and constitute promised performances under this Contract:
 - iii. Addendum A, Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.
 - iv. Addendum B, Certification Regarding Debarment, Suspension and Other Responsibility Matters.

- v. Addendum C, Additional Use Requirements; Amenities Requirements.
- vi. Exhibit A, Legal Description.
- vii. Exhibit B, Award Letter.
- viii. Exhibit C, Underwriting Report and Amended/Revised Reports and/or Multifamily Direct Loan Budget and Sources and Uses.
- ix. Exhibit D, Shared Proceeds Agreement Form Template.

Section 13.21 Acceptance

This Contract is not valid until executed by Development Owner and Department. Development Owner must deliver this Contract to the Department within thirty (30) calendar days of receipt. If a copy of the executed Contract is not in Department's possession by such time and date, this Contract shall terminate and become null and void unless Department, in its sole discretion, shall choose to extend this date in writing.

Section 13.22 Effective Date

The Effective Date of this Contract shall be the date identified below.

THIS CONTRACT WAS APPROVED BY THE BOARD OF DIRECTORS ON OCTOBER 14, 2021 (the "Board Approval Date") AND IS NOT EFFECTIVE UNLESS SIGNED BY THE EXECUTIVE DIRECTOR OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS OR ITS DULY AUTHORIZED DESIGNEE.

THIS CONTRACT IS APPROVED, ACCEPTED AND MADE EFFECTIVE ON _____, 2022 (the "Effective Date") AND WILL TERMINATE AT THE END OF THE CONTRACT PERIOD AS DEFINED IN SECTION II OF THIS CONTRACT, ON BEHALF OF DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas

By: _____
Name: Cody Campbell
Title: Its duly authorized officer or representative
Date: _____

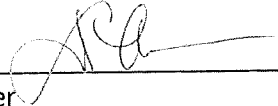
WITNESS OUR HAND EFFECTIVE:

DEVELOPMENT OWNER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: **DMA ELLA GRAND, LLC,**
a Texas limited liability company,
its managing member

By: **DMA COMMUNITY VENTURE, LLC,**
a Texas limited liability company,
its co-member

By: 
Name: Diana McIver
Title: Manager
Date: 6/20/2022

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

**ADDENDUM A
Certification Regarding Lobbying for
Contracts, Grants, Loans and Cooperative Agreements**

The undersigned hereby certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form -LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact on which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand and No/100 Dollar (\$10,000.00) and not more than One Hundred Thousand and No/100 Dollar (\$100,000.00) for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of its knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions. Submission of this statement is a


prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than Ten Thousand and No/100 Dollar (\$10,000.00) and not more than One Hundred Thousand and No/100 Dollar (\$100,000.00) for each such failure.

DEVELOPMENT OWNER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: **DMA ELLA GRAND, LLC,**
a Texas limited liability company,
its managing member

By: **DMA COMMUNITY VENTURE, LLC,**
a Texas limited liability company,
its co-member

By: 
Name: Diaria Mclver
Title: Manager
Date: 6/20/2022

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

ADDENDUM B

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The undersigned certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (Federal, State or local) terminated for cause or default.

Where the undersigned Development Owner is unable to certify to any of the statements in this certification, such Development Owner shall attach an explanation of why it cannot provide said certification to this Contract.

The undersigned Development Owner further agrees and certifies that it will include the below clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Subcontracts/Lower Tier Covered Transaction, without modification, in all subcontracts and in all solicitations for subcontracts:

***CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION – SUBCONTRACTS/ LOWER TIER COVERED TRANSACTIONS***

(1) The prospective lower tier participant/subcontractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant/subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

LOWER TIER PARTICIPANT/ Entity Name, Entity Type
SUBCONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

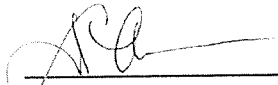
This certification is a material representation of fact upon which reliance is placed when the Department awards the grant. If it is later determined that Development Owner knowingly rendered an erroneous certification, in addition to any other remedies available to the Federal Government, the Department may terminate this Contract for cause or default.

DEVELOPMENT OWNER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: **DMA ELLA GRAND, LLC,**
a Texas limited liability company,
its managing member

By: **DMA COMMUNITY VENTURE, LLC,**
a Texas limited liability company,
its co-member

By:  _____

Name: Diana McIver

Title: Manager

Date: 6/20/2022

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

**ADDENDUM C
Additional Use Requirements;
Amenity Requirements**

This Addendum C identifies the number of amenities elected at the time of application or opted into after application for which points were awarded or otherwise required, and for which the Texas Governing Statute at §2306.187, 2021 Multifamily Direct Loan Rule, and 2020 Qualified Allocation Plan shall apply.

Accordingly, the undersigned Development Owner hereby represents the Property will have the amenities required under this Contract throughout the entire Affordability Period. Development Owner further acknowledges it was awarded points based on providing specific amenity and quality features in every Unit at no extra charge to the resident(s). Therefore, no rent or fees shall be charged to the Residents for any of the amenities. Residents must also be provided written notice of the applicable required amenities for the Development. Moreover, Development Owner is responsible for making all selected amenities available for the benefit of all residents.

MANDATORY DEVELOPMENT AMENITIES

The Development must provide the following Mandatory Development Amenities pursuant to 10 TAC §11.101(b)(4). The Development must include all of the amenities listed in (A) through (N).

- (A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;
- (B) Laundry connections;
- (C) Exhaust/vent fans (vented to the outside) in the bathrooms;
- (D) Screens on all operable windows;
- (E) Disposal and Energy-Star or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);
- (F) Energy-Star or equivalently rated refrigerator;
- (G) Oven/Range;
- (H) Blinds or window coverings for all windows;
- (I) At least one (1) Energy-Star or equivalently rated ceiling fan per Unit;
- (J) Energy-Star or equivalently rated lighting in all Units;
- (K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one (1) space per Unit. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) [Energy-Star or equivalently rated windows Energy-Star or equivalently rated windows; and

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, HUD's Fair Housing Act Design Manual and the Texas Accessibility Standards.

COMMON AMENITIES

The Development must include sufficient common amenities to qualify for at least a minimum of fourteen (14) points in accordance with 10 TAC §11.101(b)(5). These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained under this Contract throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement as provided on each Development Site. For example, if a swimming pool exists on the phase one Property and it is anticipated that the second phase residents will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be available to all Units via an accessible route.

The common amenities and respective point values are listed in (i) through (v) and are grouped primarily for organizational purposes. Development Owner is not required to select a specific number of amenities from each section. Development Owner can only count an amenity once; therefore combined functions (e.g. a library which is part of a community room) will only qualify for points under one (1) category:

(i) Community Space for Resident Supportive Services:

Intentionally Omitted.

(ii) Safety:

- (I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);
- (II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (III) Twenty-four (24) hour, seven (7) days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

(IV) Twenty-four (24) hour, seven (7) days a week recorded camera / security system in each building (1 point); and

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one (1) item for every forty (40) Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one (1) item for every twenty (20) Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

(IV) Intentionally deleted;

(V) Intentionally deleted;

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);

(VII) Swimming pool (3 points);

(VIII) Splash pad/water feature play area (1 point); and

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points).

(iv) Design/Landscaping:

(I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);

(II) Enclosed community sun porch or covered community porch/patio (1 point);

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);

(IV) Shaded rooftop or structural viewing deck of at least five hundred (500) square feet (2 points);

(V) Porte-cochere (1 point);

(VI) Lighted pathways along all accessible routes (1 point); and

(VII) A resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).

- (v) Community Resources:** (I) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
- (II) Community laundry room with at least one (1) washer and dryer for every forty (40) Units (2 points);
 - (III) Barbecue grill and picnic table with at least one (1) of each for every fifty (50) Units (1 point). Grill must be permanently installed (no portable grills);
 - (IV) Business center with workstations and seating internet access, one (1) printer and at least one (1) scanner which may be integrated with the printer, and either two (2) desktop computers or laptops available to check-out upon request (2 points);
 - (V) Furnished Community room (2 points);
 - (VI) Library with an accessible sitting area (separate from the community room) (1 point);
 - (VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
 - (VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
 - (IX) Community Theater Room equipped with a fifty-two (52) inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);
 - (X) High-speed Wi-Fi of ten (10) Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);
 - (XI) High-speed Wi-Fi of ten (10) Mbps download speed or more with coverage throughout the Development (2 points);
 - (XII) Bicycle parking that allows for, at a minimum, one (1) bicycle for every five (5) Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);
 - (XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents twenty-four (24) hours, seven (7) days a week and at no charge to the resident. To qualify, there would need to be at least one (1) locker for every eight (8) residential units (2 points);
 - (XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point); and
 - (XV) Community car vacuum station (1 point).

UNIT, DEVELOPMENT CONSTRUCTION, AND ENERGY AND WATER EFFICIENCY FEATURES

The Development must include sufficient Unit, Development Construction, and Energy Efficiency Features (sometimes referred to as "amenities") to qualify for at least a minimum of nine (9) points, as selected at Application pursuant to 10 TAC §11.101(b)(6)(B) and identified in the corresponding list below. Development owner must maintain the points associated with those amenities selected at Application for scoring purposes by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Additionally, those points selected at Application and corresponding list of amenities must be maintained under this Contract, throughout the Federal Affordability Period or Contract Term, whichever is longer. Similarly, the points selected at Application and the corresponding list of amenities will be required to be identified in the LURA and maintained as required therein.

Importantly, each feature or amenity shall be for every Unit at no extra charge to the tenant. At least two (2) points must be selected from the Energy and Water Efficiency Features listed in clause (iii) below.

(i) Unit Features:

- (I) Covered entries (0.5 point);
- (II) Nine foot (9') ceilings in living room and all Bedrooms (at minimum) (1 point);
- (III) Microwave ovens (0.5 point);
- (IV) Self-cleaning or continuous cleaning ovens (0.5 point);
- (V) Storage room or closet, of approximately nine (9) square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);
- (VI) Covered patios or covered balconies (0.5 point);
- (VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (VIII) Built-in (recessed into the wall) shelving unit (0.5 point);
- (IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);
- (X) Walk-in closet in at least one (1) Bedroom (0.5 point);
- (XI) Forty-eight inch (48") upper kitchen cabinets (1 point);
- (XII) Kitchen island (0.5 points);
- (XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);
- (XIV) Natural stone or quartz countertops in kitchen and bath (1 point);
- (XV) Double vanity in at least one (1) bathroom (0.5 point); and
- (XVI) Hard floor surfaces in over fifty percent (50%) of unit Net Rentable Area (NRA) (0.5 point).

(ii) Development Construction Features:

- (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one (1) covered space per Unit (1.5 points);
- (II) Thirty (30) year roof (0.5 point);
- (III) Greater than thirty percent (30%) stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (IV) Electric Vehicle Charging Station (0.5 points);
- (V) An Impact Isolation Class (IIC) rating of at least fifty-five (55) and a Sound Transmission Class ("STC") rating of sixty (60) or higher in all Units, as certified by the architect or engineer of record (3 points); and
- (VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one (1) of the categories described in items (-a)-(-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as

provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (“LEED”). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (“NGBS”). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features:

- (I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);
- (II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);
- (IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);
- (V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);
- (VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);
- (VII) 15 SEER HVAC;
- (VIII) 16 SEER HVAC, for New Construction, Reconstruction, or Rehabilitation (1.5 points); and
- (IX) A rainwater harvesting/collection system and/or locally approved greywater collection system (0.5 points).

RESIDENT SUPPORTIVE SERVICES

The Development must include sufficient Resident Supportive Services to qualify for at least a minimum of eleven (11) points, as selected at Application pursuant to 10 TAC §11.101(b)(7). The supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. The points selected and complete list of supportive services are provided in this section and must be maintained under this Contract throughout the Affordability Period or Contract Term, whichever is longer. Moreover, the points selected and complete list of supportive services will be required to be identified in the LURA and the timeframe by which services are offered must be in accordance with 10 TAC §10.619 (relating to Monitoring for Social Services) and maintained under the LURA as required therein.

The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the Qualified Allocation Plan in subsequent years provide different services than those listed in (A) - (E) below, the Development Owner may request an Amendment as provided in 10 TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g.

exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one (1) scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause below, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services:

- (i) Shuttle, at least three (3) days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and
- (ii) Monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services:

- (i) Provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7)); and
- (ii) Twelve (12) hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services:

- (i) Four (4) hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) Annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) Contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points); and
- (iv) External partnerships for provision of weekly substance abuse meetings at the Development Site (1 point).

(D) Health Supportive Services:

- (i) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);
- (ii) Annual health fair provided by a health care professional (1 point);
- (iii) Weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and
- (iv) Contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services:

- (i) Partnership with local law enforcement and/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);
- (ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (iii) Twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);
- (iv) Twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);
- (v) Specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);
- (vi) Weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);
- (vii) Any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (viii) A part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of fifteen (15) hours or more of weekly resident supportive services at the Development (2 points); and
- (ix) Provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

COMMUNITY SPACE FOR OUTREACH SERVICES AND EDUCATION

Applicant will contact local nonprofit and governmental providers of services that would support the health and well-being of Development residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants,

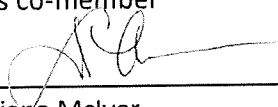
pursuant to 10 TAC §11.9(c)(3)(B). Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located (1 point).

DEVELOPMENT OWNER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: **DMA ELLA GRAND, LLC,**
a Texas limited liability company,
its managing member

By: **DMA COMMUNITY VENTURE, LLC,**
a Texas limited liability company,
its co-member

By: 
Name: Diana McIver
Title: Manager
Date: 6/20/2022

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM

HOME CONTRACT # 1003234

EXHIBIT A
Legal Description

BEING A TRACT OF LAND CONTAINING 3.5584 ACRES (155,004 SQUARE FEET) OUT OF AND A PART OF WOODLAKE, SECTION 4, A SUBDIVISION IN HARRIS COUNTY, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 174, PAGE 15, OF THE HARRIS COUNTY MAP RECORDS, AND BEING THE SAME PROPERTY AS DESCRIBED IN DEED RECORDED UNDER HARRIS COUNTY CLERK'S FILE NO. F-546245 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID WOODLAKE, SECTION 4, AND BEING ON THE EAST RIGHT-OF-WAY LINE OF SOUTH GESSNER ROAD, (100.00 FEET WIDE);
THENCE SOUTH 02 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 182.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTH GESSNER ROAD, TO A 5/8 INCH CAPPED IRON ROD SET FOR THE NORTHWEST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;
THENCE SOUTH 02 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 431.28 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTH GESSNER ROAD TO A 5/8 INCH CAPPED IRON ROD SET AT A CUT-BACK CORNER;
THENCE SOUTH 47 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 14.14 FEET TO THE END OF SAID CUT-BACK CORNER IN THE NORTH RIGHT-OF-WAY LINE OF ELLA LEE LANE (60.00 FEET WIDE) FROM WHICH A FOUND 5/8 INCH IRON ROD BEARS SOUTH 24 DEGREES 05 MINUTES 51 SECONDS EAST, 0.54 FEET;
THENCE NORTH 87 DEGREES 39 MINUTES 22 SECONDS EAST, A DISTANCE OF 178.96 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF ELLA LEE LANE TO A 5/8 INCH CAPPED IRON ROD SET FOR THE P.C. OF A CURVE TO THE RIGHT;
THENCE EASTERLY ALONG THE NORTH RIGHT-OF-WAY LINE OF ELLA LEE LANE AND SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 09 DEGREES 54 MINUTES 47 SECONDS AND A RADIUS OF 1260.00 FEET, A DISTANCE OF 218.00 FEET TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 5/8 INCH IRON ROD FOUND BEARS NORTH 09 DEGREES 50 MINUTES 31 SECONDS WEST, 0.94 FEET;
THENCE NORTH 08 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 40.36 FEET TO THE P.C. OF A CURVE TO THE RIGHT;
THENCE NORTHERLY ALONG SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 14 DEGREES 44 MINUTES 30 SECONDS AND A RADIUS OF 164.00 FEET, A DISTANCE OF 42.20 FEET;
THENCE NORTH 66 DEGREES 19 MINUTES 30 SECONDS WEST, A DISTANCE OF 21.00 FEET ALONG A RADIAL LINE OF CURVE TO THE LEFT TO THE P.C. OF SAID CURVE;
THENCE NORTHERLY ALONG SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 25 DEGREES 24 MINUTES 34 SECONDS, AND RADIUS OF 115.00 FEET, A DISTANCE OF 51.00 FEET;
THENCE NORTH 88 DEGREES 15 MINUTES 56 SECONDS EAST, A DISTANCE OF 21.00 FEET ALONG A RADIAL LINE OF A CURVE TO THE LEFT, TO THE P.C. OF SAID CURVE;
THENCE NORTHERLY ALONG SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE 05 DEGREES 36 MINUTES 34 SECONDS AND RADIUS OF 136.00 FEET, A DISTANCE OF 13.31 FEET;
THENCE NORTH 07 DEGREES 20 MINUTES 38 SECONDS WEST, A DISTANCE OF 17.00 FEET

TO A POINT FOR CORNER;
THENCE SOUTH 82 DEGREES 39 MINUTES 22 SECONDS WEST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE NORTH 07 DEGREES 20 MINUTES 38 SECONDS WEST, A DISTANCE OF 51.00 FEET
TO A POINT FOR CORNER;
THENCE NORTH 82 DEGREES 39 MINUTES 22 SECONDS EAST, A DISTANCE OF 21.00 FEET A
RADIAL LINE OF A CURVE TO THE RIGHT TO THE P.C. OF SAID CURVE;
THENCE NORTHERLY ALONG SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF
06 DEGREES 51 MINUTES 20 SECONDS AND RADIUS OF 164.00 FEET, A DISTANCE OF 19.62
FEET, TO THE P.C. OF A CURVE TO THE LEFT;
THENCE NORTHWESTERLY ALONG SAID CURVE TO THE LEFT, HAVING A CENTRAL
ANGLE OF 75 DEGREES 18 MINUTES 09 SECONDS AND RADIUS OF 20.00 FEET, A DISTANCE
OF 26.29 FEET;
THENCE SOUTH 14 DEGREES 12 MINUTES 33 SECONDS WEST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE NORTH 75 DEGREES 47 MINUTES 27 SECONDS WEST, A DISTANCE OF 34.21 FEET
TO A POINT FOR CORNER;
THENCE NORTH 14 DEGREES 12 MINUTES 33 SECONDS EAST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT, HAVING A CENTRAL
ANGLE OF 28 DEGREES 26 MINUTES 49 SECONDS AND RADIUS OF 35.00 FEET, A DISTANCE
OF 17.38 FEET;
THENCE SOUTH 42 DEGREES 39 MINUTES 22 SECONDS WEST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE NORTH 47 DEGREES 20 MINUTES 38 SECONDS WEST, A DISTANCE OF 161.82 FEET
TO A POINT FOR CORNER;
THENCE NORTH 42 DEGREES 39 MINUTES 22 SECONDS EAST, A DISTANCE OF 21.00 FEET
ALONG THE RADIAL LINE OF A CURVE TO THE RIGHT TO THE P.C. SAID CURVE;
THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT, HAVING A CENTRAL
ANGLE OF 28 DEGREES 59 MINUTES 29 SECONDS AND RADIUS OF 35.00 FEET, A DISTANCE
OF 17.71 FEET;
THENCE SOUTH 71 DEGREES 38 MINUTES 51 SECONDS WEST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE NORTH 18 DEGREES 21 MINUTES 09 SECONDS WEST, A DISTANCE OF 25.00 FEET
TO A POINT FOR CORNER;
THENCE NORTH 71 DEGREES 38 MINUTES 51 SECONDS EAST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE NORTH 18 DEGREES 21 MINUTES 09 SECONDS WEST, A DISTANCE OF 7.94 FEET TO
THE P.C. OF A CURVE TO THE LEFT;
THENCE WESTERLY ALONG SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 73
DEGREES 17 MINUTES 24 SECONDS AND RADIUS OF 20.00 FEET, A DISTANCE OF 25.58 FEET
TO THE P.C. OF A CURVE TO THE RIGHT;
THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF
12 DEGREES 21 MINUTES 31 SECONDS, A RADIUS OF 164.00 FEET, A DISTANCE OF 35.37 FEET
TO THE P.C. OF CURVE TO THE RIGHT;
THENCE SOUTH 10 DEGREES 42 MINUTES 58 SECONDS WEST, A DISTANCE OF 21.00 FEET
ALONG THE RADIAL LINE OF A CURVE TO THE LEFT TO THE P.C. OF SAID CURVE;
THENCE WESTERLY ALONG THE SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE
OF 13 DEGREES 03 MINUTES 36 SECONDS AND RADIUS OF 115.00 FEET, A DISTANCE OF
26.21 FEET;
THENCE SOUTH 87 DEGREES 39 MINUTES 22 SECONDS WEST, A DISTANCE OF 24.79 FEET TO
A POINT FOR CORNER;
THENCE NORTH 02 DEGREES 20 MINUTES 38 SECONDS WEST, A DISTANCE OF 21.00 FEET
TO A POINT FOR CORNER;
THENCE SOUTH 87 DEGREES 39 MINUTES 22 SECONDS WEST, A DISTANCE OF 26.67 FEET TO
POINT FOR CORNER;

THENCE SOUTH 02 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 21.00 FEET TO
A POINT FOR CORNER;
THENCE SOUTH 87 DEGREES 39 MINUTES 22 SECONDS WEST, A DISTANCE OF 59.50 FEET TO
A POINT FOR CORNER;
THENCE NORTH 02 DEGREES 20 MINUTES 38 SECONDS WEST, A DISTANCE OF 21.00 FEET
TO A POINT FOR CORNER;
THENCE SOUTH 87 DEGREES 39 MINUTES 22 SECONDS WEST, A DISTANCE OF 44.04 FEET TO
THE POINT OF BEGINNING, AND CONTAINING 3.5584 ACRES (155,004 SQUARE FEET) OF
LAND.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

**EXHIBIT B
Award Letter**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

EXHIBIT C

**Underwriting Report and Amended/Revised Reports and/or Multifamily Direct Loan Budget and
Sources and Uses**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

EXHIBIT C

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MULTIFAMILY DIRECT LOAN PROGRAM**

HOME CONTRACT # 1003234

**EXHIBIT D
Shared Proceeds Form Template**

SHARED PROCEEDS AGREEMENT

This Shared Proceeds Agreement ("Agreement") is made by and among the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas ("TDHCA Lender"), City of Houston, a Texas home-rule municipality ("City Lender"), and ■, a ■ ("Borrower").

WHEREAS the City Lender and TDHCA Lender entered into that certain Subordination Agreement dated even herewith regarding encumbrance of the Property, as such term is defined in the Subordination Agreement ("Property"); and

WHEREAS the City Lender is the owner and holder of a third lien promissory note in the amount of \$■ ("City Lender Loan") executed by Borrower and made payable to City Lender, dated on or about even date herewith, secured by a ■ [Fee Deed of Trust, Assignment of Rents and Security Agreement and Leasehold Deed of Trust, Assignment of Rents and Security Agreement] (collectively, "City Lender Deed of Trust") to ■ [Keith W. Bynam, trustee] for City Lender, executed by Borrower and ■, respectively, and to be recorded in the Official Public Records of ■ County, Texas ("Records"), encumbering Property located in ■, Texas; and

WHEREAS, Borrower has applied to the TDHCA Lender, for a loan in the amount of \$ _____ ("TDHCA Lender Loan") to be secured by a second lien deed of trust ("TDHCA Lender Deed of Trust") to _____, trustee for the TDHCA Lender, on the Property, which said second lien deed of trust is to be filed for record in the Records; and

WHEREAS, the parties wish to clarify their agreement with respect to sharing lien priority on all collateral proceeds including any proceeds from a foreclosure sale of the Property; and

WHEREAS, the loan to be made to the Borrower by the TDHCA Lender will be secured by a second lien on the Property owned by Borrower and the TDHCA Lender desires that its second lien in the Property share in priority on a proportionate, co-equal basis with the third lien deed of trust lien in the Property held by the City Lender; and

WHEREAS, the parties wish to clarify their agreement with respect to foreclosure of their respective liens on the collateral (including the Property) and the sharing of the proceeds, if any, from the liquidation of collateral including proceeds received from a foreclosure sale or subsequent sale after foreclosure.

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

1. Definitions. The following terms used in this Agreement shall have the following meanings, unless the context indicates otherwise:

(a) "Collateral" includes all property securing the repayment of the Loans including the Property, rents, deposit accounts (including reserve accounts, revenue accounts, etc.), and security deposits.

(b) "Collection" or "Collections" includes any proceeds received by Lenders from the disposition of Collateral including any excess proceeds received from a foreclosure sale of a superior lien lender, any proceeds received from a foreclosure sale by TDHCA Lender or a subsequent sale by a Lender after foreclosure, and Collateral when in the form of monies. Monies received by a Lender by way of offset or setoff are not a Collection. Any proceeds from a foreclosure sale that exceed the total amounts due on both the TDHCA Loan and City Loan, will be distributed to subordinate lienholders by the foreclosure trustee in accordance with Texas foreclosure law and such proceeds are not a Collection.

(b) "Lenders" means City Lender and TDHCA Lender collectively. "Lender" means City Lender or TDHCA Lender individually.

(c) "Loan Documents" means with respect to any of the Lenders those agreements, instruments and documents evidencing the terms of the Loan including, but not limited to, the City Lender Deed of Trust, the TDHCA Lender Deed of Trust, the promissory note(s) and any other agreement or instrument in writing which secure the repayment of the Loan(s) or which evidence the obligations of Borrower in connection with the Loan(s) as those agreements are thereafter amended, modified, renewed or extended from time to time.

(d) "Loan" or "Loans" includes the City Lender Loan and the TDHCA Lender Loan which are evidenced by promissory note(s) and all other promissory note(s) or other instruments relating thereto as may be executed subsequent to the date of this Agreement by Borrower to amend, modify, renew or extend such Loan(s).

2. Notice and Consultation Required. Unless prior written notice has been given by one Lender to the other in the manner and to the addresses specified in Section 3 of this Agreement and the Lenders have consulted with each other in accordance with Section 6 of this Agreement, Lenders will not:

(a) declare the Loan Documents to be in default;

(b) accelerate the Loan secured by the Loan Documents;

(c) commence the foreclosure of the Loan Documents pursuant to a power of sale, if any, contained in said Loan Documents or by way of a judicial foreclosure;

(e) sell, transfer or otherwise dispose of the Loan and Loan Documents; and/or

(f) reamortize, modify, restructure, renew or extend the terms, conditions, or provisions of the Loan and/or the Loan Documents.

3. Notice. Any notice required under this Agreement will be mailed to the Lenders by certified mail and will be delivered to the Lenders not less than thirty (30) calendar days prior to the intended action. Said notice will be addressed to and delivered to the Lenders as follows:

(a) If to TDHCA Lender:

Texas Department of Housing and Community Affairs
Attn: Director of Multifamily Finance Division
221 11th Street, Austin, Texas 78701
P.O. Box 13941
Austin, Texas 78711-3941

with copy to:

Texas Department of Housing and Community Affairs
Attn: Multifamily Asset Management Division
221 11th Street, Austin, Texas 78701
P.O. Box 13941
Austin, Texas 78711-3941

(b) If to City Lender:

City of Houston
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

with copy to:

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Real Estate

(c) If to Borrower:

4. Notice of Default.

(a) If a default occurs in the payment of any of the Loans, the affected Lender shall give the other Lender written notice of such default. Said notice shall be mailed to the Lender in the manner and to the addresses specified in Section 3 of this Agreement and within thirty (30) days of the occurrence of such default.

(b) This notice of default is a separate notice from the declaration of default described in Section 2(a).

(c) If the default is cured after the written notice of default is given under this Section, the affected Lender shall give the other Lender written notice of such cure in the same manner as the written notice of default was given.

5. Cross Default. Any default by Borrower under a Lender's Loan and any related Loan Documents shall automatically create a default under the other Lender's Loan and related Loan Documents.

6. Consultation Among Lenders.

(a) In the event of a default by Borrower, the Lenders agree to discuss that event of default and the consequences the event of default may have on Borrower.

(b) Lenders will also consult with each other before either one takes any of the actions described in Section 2.

(c) Lenders will consult with each other before either one makes an advance for the preservation or protection of the Property or for Collection expenses. In addition, Lenders will comply with the requirements of Section 12.

(d) Any discussion or consultation between both Lenders under this Agreement will involve authorized officials of the Lenders and may occur in a face-to-face meeting, by telephone or by a video conference. The discussions and consultations will be confirmed in writing prior to any action being taken. The written confirmation may be in the form of a letter, memorandum or email.

7. Remedies. In the event of a default under a Lender's Loan Documents, the other Lender may, at its option upon consultation and upon providing notice to the other Lender:

(a) Cure any non-monetary default and provide evidence of such cure to the Lender;

(b) Cure any monetary default and pay the amount of the Borrower's delinquent payments to the Lender; or

(c) Pay the defaulting Loan in full following an acceleration of the Loan.

8. Sale, Transfer and Purchase of Loan. In the event Lender elects to sell, transfer or otherwise dispose of the Loan and Loan Documents and after providing notice to the other Lender of

this intended action and upon consultation with each other, as required by this Agreement, the other Lender may, at its option, purchase or payoff said Loan in accordance with the following:

(a) The other Lender shall have the first and prior right to purchase or pay off the Loan and Loan Documents.

(b) The other Lender will advise Lender of its election in writing within thirty (30) calendar days following the receipt of the notice of the Lender's intended action or notice of default.

(c) Within ten (10) calendar days of receipt of the other Lender's election, Lender will provide the other Lender with Loan information in accordance with Section 14 of this Agreement.

(d) Within thirty (30) calendar days of receipt of the complete Loan information, the other Lender may purchase or payoff said Loan in full.

(e) When the Loan is purchased, the selling Lender will endorse its note to the other Lender, without recourse, assign its Loan Documents to the other Lender, and deliver the endorsed note and assignment to the other Lender at the address identified in Section 3 of this Agreement.

(f) When the Loan is paid in full, Lender will mark its note or other evidence of the Loan "paid in full", file a release of its lien of record and deliver the note and the recorded release to the other Lender at the address identified in Section 3 of this Agreement.

(g) If Lender fails to adhere to the requirements in this Section 8 to exercise its rights under to purchase or pay off the Loan, the other Lender is released from all obligations under this Section 8.

9. Sharing of Collections.

(a) Each Lender agrees that, notwithstanding the order of attachment, filing, recording or other perfection, or the non-perfection of or the priority of, any liens securing either of the Lenders' Loans, and notwithstanding any provision of any of the Loan Documents to the contrary, any Collections received by either Lender upon the foreclosure of the Property shall be shared on a parity prorated basis according to the advanced comparative outstanding balances due to City Lender and to TDHCA Lender from Borrower and as determined in the Formula for Proportionate Sharing provided in Section 10.

(b) All Collections, if any, will be divided using the Formula for Proportionate Sharing provided in Section 10 after the payment of any advances as provided in Section 12.

10. Formula for Proportionate Sharing; Division and Delivery. Subject to the payment of advances as provided in Section 12, all Collections to be divided between City Lender and TDHCA Lender pursuant to this Agreement will be divided using the City Lender's and the TDHCA Lender's respective percentage multiplier.

(a) The City Lender's and the TDHCA Lender's respective percentage multiplier is computed as follows:

(1) For the City Lender's percentage multiplier, the numerator is the amount then owing under the City Lender's Loan and the denominator is the sum of the amount then owing under both the City Lender's Loan and the TDHCA Lender's Loan, and

(2) For the TDHCA Lender's percentage multiplier, the numerator is the amount then owing under the TDHCA Lender's Loan and the denominator is the sum of the amount then owing under both the City Lender's Loan and the TDHCA Lender's Loan.

The respective multipliers will be rounded up to the nearest tenth of a point. The sum of the City Lender's percentage multiplier and the TDHCA Lender's percentage multiplier should total 100%.

(b) Following receipt by a Lender of a Collection, the Lenders' respective percentage multipliers shall be determined as of the date the Collection is to be divided.

(1) The total amount of the Collection to be divided will be multiplied by each Lender's respective percentage multiplier. The respective products of those calculations will then be delivered to each respective Lender to be applied to that Lender's Loans.

(2) Division and delivery will occur within 30 calendar days of receipt of a Collection by either Lender. Provided, however, the Lender receiving the Collection to be divided may ask the other Lender for additional time to divide and deliver the Collection but any such request for additional time will be made within the 30-calendar-day period.

(3) When a share of a Collection is delivered to a Lender under this section, the share of the Collection being delivered will be accompanied by an accounting prepared by the Lender which received, divided and delivered the Collection. The accounting will identify the Collection and its source, show how the respective percentage multipliers were calculated and how the respective shares of the Collection received were computed.

11. Receipt of Monies in Excess of Proportionate Share.

(a) Except as otherwise provided in this Section, each Lender agrees not to demand, sue for, take or receive, directly or indirectly, in cash or other property or in any other manner, any Collection in excess of the Lender's pro-rata share of Collections as determined in accordance with this Agreement.

(b) Any Collection received by a Lender contrary to the provisions herein shall be received in trust for the benefit of the other Lender, shall be segregated from other funds and property held by the Lender and shall be delivered to the other Lender within 30 calendar days of receipt by the Lender who is holding such Collection in trust under this provision. Provided, however, the Lender receiving the Collection to be segregated and delivered may ask the other Lender for additional time to deliver the Collection but any such request for additional time will be made within the 30-calendar-day period.

(c) Monies received by a Lender by way of offset or setoff are exempt from the requirements of this Section and will not be shared with the other Lender.

12. Advances.

(a) If the Loan Documents secure the repayment of future advances, Lender will make no advances for any purpose without the prior written consent of the other Lender.

(b) Notwithstanding the formula for apportioning Collections between the Lenders as contained in Section 10 of this Agreement, advances made by the City Lender or TDHCA Lender for the mutual benefit or protection of both Lenders, which are agreed to by both Lenders as provided in Section 12(a) and which are charged to Borrower's account shall be paid first before the apportionment of funds between City Lender and Lender. Such advances may include advances to protect or preserve the Property, to pay ad valorem taxes or Property insurance, and to pay Collection and/or foreclosure expenses (such as attorney fees, advertising and sale costs, lien searches and title examinations and Property appraisal fees).

(c) For all advances made by a Lender which will be paid first as provided in Section 12(b), the Lender will provide an accounting to the other Lender. The accounting will include an itemized list of each advance made, the date of the advance, the purpose of the advance, and the payee of the advance and the supporting documentation including the invoice or billing for the charge and the Lender's payment of that advance item.

13. Foreclosure and Disposition of Property. In the event a Lender elects to sell, transfer or otherwise dispose of the Property and after providing notice to the other Lender of this intended action and after consultation as required by Sections 2 and 6 of this Agreement, Lender shall comply with the following:

(a) If a Lender elects to initiate a judicial foreclosure proceeding against the Property under a court judgment, Lender will name the other Lender as a defendant in the judicial action and allege that Lenders share a lien priority on all collateral proceeds on the Property and other Collateral pursuant to this Agreement.

(1) Proceeds received from the sale or disposition of the Collateral (including the Property) shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement after the payment of any advances as provided in Section 12.

(2) Sale proceeds in excess of court costs, advances, sale expenses and the respective unpaid balances of all Loans are excess sale proceeds for the purposes of this Section 13(a) and not a Collection. Excess sale proceeds shall be disbursed in accordance with the judgment or order of the court.

(b) If TDHCA Lender elects to foreclose its superior lien and initiate a non-judicial foreclosure proceeding against the Property under a power of sale conferred by a deed of trust pursuant to Section 51.002 of the Texas Property Code lien as a superior lien on the Property-

(1) The proceeds of the foreclosure sale received from a third party buyer shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement after the payment of any advances under Section 12.

(2) TDHCA Lender will not be required to bid more than the amount owed on the TDHCA Lender Loan or Loans which are secured by the TDHCA Lender's senior lien being foreclosed.

(3) Sale proceeds in excess of advances, sale expenses and the respective unpaid balances of all Loans are excess sale proceeds for the purposes of this Section 13(b). Said excess sale proceeds shall be disbursed in accordance with the provisions of the deed of trust which was foreclosed and in accordance with Texas law.

(4) City Lender's subordinate lien will be extinguished by the foreclosure sale in accordance with Texas law.

(5) If the foreclosing TDHCA Lender obtains title to the Property at the foreclosure sale, TDHCA Lender will take title to the Property free and clear of City Lender's subordinate lien and all subordinate liens will be extinguished.

(6) Upon any subsequent sale of the Property to a third party buyer and after Lenders have mutually agreed in writing to the sale price, the proceeds of the sale shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement (after the payment of any advances under Section 12).

(c) If City Lender elects to foreclose its subordinate lien and initiate a non-judicial foreclosure proceeding against the Property under a power of sale conferred by a deed of trust pursuant to Section 51.002 of the Texas Property Code lien as a subordinate lien on the Property-

(1) Title to the Property, upon foreclosure of the City Lender's subordinate lien, will be taken subject to the TDHCA Lender's senior lien.

(2) The TDHCA Lender's senior lien will not be extinguished by the foreclosure.

(3) If the foreclosing City Lender obtains title to the Property at the foreclosure sale, City Lender will take title to the Property subject to the TDHCA Lender's senior lien.

(4) Upon any subsequent sale of the Property by City Lender to a third party buyer, and after Lenders have mutually agreed in writing to the sale price, the proceeds of the sale shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement (after the payment of any advances under Section 12) and the TDHCA Lender's senior lien shall be released.

(d) No Lender may accept a voluntary conveyance of the Property or a deed in lieu of foreclosure for the Property without the prior written consent of the other Lender.

14. Request for Loan Information. Upon written request by a Lender and within ten (10) calendar days of receipt of the request, the other Lender will provide the requesting Lender with the following information:

(a) current unpaid balance of the Loan and an itemized description of each component of the unpaid balance including unpaid principal, accrued interest and advances, fees and charges, if any;

(b) the amount of the delinquency, if any, on the Loan;

(c) amortization schedule for payments on the Loan;

(d) information as to the status of insurance and/or ad valorem taxes;

(e) copies of any current insurance policies covering the Property; and

(f) information pertaining to Borrower's defaults under the Loan and/or Loan Documents.

15. No Detriment. Lenders agree that the lien position of City Lender shall be subordinate to the lien position of the TDHCA Lender prior to the initiation of a foreclosure action; however, neither the City Lender nor the TDHCA Lender shall have the right to foreclose or otherwise enforce its interest and security to the detriment or exclusion of the other.

16. Servicing. No Lender shall perform any servicing function on behalf of another Lender with respect to another Lender's Loan unless the parties enter into an express written Agreement providing for the performance of such servicing functions.

17. Term; Binding Effect. This Agreement shall remain in full force and effect until the Loans have been paid in full, and shall be binding on each party's successors and assigns.

18. Conflicts between Loan Documents and this Agreement. If there are any conflicts between the provisions in this Agreement and the Loan Documents regarding the identity of the Loans secured by the Loan Documents, any provision for making advances or the disposition or distribution of Collections, the provisions of this Agreement shall control. However, subject to the foregoing sentence, nothing in this Agreement shall otherwise supersede or override any other provision contained in the Lenders' Loan Documents.

19. Conflicts between Subordination Agreement and this Agreement. If there are any conflicts between the provisions in this Agreement and the provisions in the Subordination Agreement, this Agreement shall control.

20. Termination. This Agreement will terminate when the Loan or Loans of either Lender are paid in full.

[Signatures on following pages]

EXECUTED AND DELIVERED THIS ____ day of _____, 20■.

CITY LENDER:

CITY OF HOUSTON, a Texas home-rule
municipality _____

By: _____, a
_____, its

By: _____

Name: _____

Title: _____

Date: _____

TDHCA LENDER:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS, a public and official agency of the State of Texas

By: _____

Name: _____

Title: Duly Authorized Officer or Representative

Date: _____


BORROWER APPROVAL AND CONSENT:

The Borrower consents to the provisions of this Agreement and approves this Agreement.

BORROWER:

Houston DMA Housing II, LLC _____, a
Texas Limited Liability Company

By: DMA Ella Grand, LLC _____, a
Texas Limited Liability Company _____, its
managing member

By:  _____
Name: Diana McIver
Title: Manager

Date: 6/20/2022

EXHIBIT C
PRELIMINARY CONSTRUCTION BUDGET
[Attached]

Cost Allocation Chart

Sources and Uses of Funds

Describe all sources of funds and total uses of funds. Information must be consistent with the Development Cost Schedule. Where funds such as tax credits, loan guarantees, bonds are used, only the proceeds going into the development should be identified so that "sources" match "uses."

USES OF FUNDS	Total Cost	COH-CDBG-DR	Capital One	RBC Capital	Developer financing	Other Financing
Acq - Contract Price	\$ 7,000,000.00	\$ 6,500,000.00		\$ 500,000.00		
Acq - Closing/Legal Other	\$ -					
Off-Sites	\$ -					
Site work	\$ 3,301,500.00	\$ 3,301,500.00				
Direct Construction costs	\$ 17,002,625.00	\$ 2,198,500.00	\$ 5,500,000.00	\$ 7,124,123.00		\$ 2,180,000.00
General Requirements (+5%)	\$ 1,417,495.00			\$ 1,417,495.00		
Overhead (-2%)	\$ 412,560.00			\$ 412,560.00		
Profit (+6%)	\$ 1,052,026.00			\$ 1,052,026.00		
Architectural - Design Fees	\$ 397,000.00			\$ 397,000.00		
Architectural - Supervision Fees	\$ 68,400.00			\$ 68,400.00		
Engineering Fees	\$ 120,000.00			\$ 120,000.00		
Real Estate Attorney/other legal fees	\$ 180,000.00			\$ 180,000.00		
Accounting Fees	\$ 20,000.00			\$ 20,000.00		
Impact Fees	\$ 250,000.00			\$ 250,000.00		
Building permits & related costs	\$ 100,000.00			\$ 100,000.00		
Appraisal	\$ 10,000.00			\$ 10,000.00		
Market analysis	\$ 7,500.00			\$ 7,500.00		
Environmental Assessment	\$ 10,500.00			\$ 10,500.00		
Soils Report	\$ 11,400.00			\$ 11,400.00		
Survey	\$ 25,000.00			\$ 25,000.00		
Marketing	\$ 43,580.00			\$ 43,580.00		
Cost of Construction Insurance	\$ 350,000.00			\$ 350,000.00		
Hazard & liability insurance	\$ -			\$ -		
Real Property Taxes	\$ 24,500.00			\$ 24,500.00		
Personal Property Taxes	\$ -			\$ -		
Tenant Relocation Expenses	\$ -			\$ -		
Other Indirect/Soft Costs	\$ 222,000.00			\$ 222,000.00		
Housing Consultant Fees	\$ -			\$ -		
Developer Fee - G & A	\$ -			\$ -		
Developer Profit	\$ 2,975,000.00			\$ 1,459,818.00	\$ 1,515,182.00	
Construction Loan(s)						
Interest	\$ 1,000,000.00			\$ 1,000,000.00		
Origination fee	\$ 120,000.00			\$ 120,000.00		
Title & recording fees	\$ 190,000.00			\$ 190,000.00		
Closing costs & legal fees	\$ 100,000.00			\$ 100,000.00		
Inspection Fees	\$ 45,000.00			\$ 45,000.00		
Credit Report	\$ -			\$ -		
Discount Points	\$ -			\$ -		
Permanent Loan(s)						
Origination Fees	\$ 55,000.00			\$ 55,000.00		
Title & Recording Fees	\$ 25,000.00			\$ 25,000.00		
Closing costs & legal fees	\$ 50,000.00			\$ 50,000.00		
Bond premium	\$ -			\$ -		
Credit report	\$ -			\$ -		

Uses	Amount
Hard Cost	\$ 23,186,204.00
Soft Cost	\$ 3,515,180.00
Acquisition Cost	\$ 7,000,000.00
Developer Fee	\$ 2,975,000.00
Reserves	\$ 747,175.00
Total Project Cost:	\$ 37,423,559.00

Amount	2,180,000
Agency	TDHCA
Commitment Verified?	No
Terms of Financing	0% interest, cash flow
Funding Terms	.15 year term

Amount
Agency
Commitment Verified?
Terms of Financing
Funding Terms

EXHIBIT D
SCOPE OF WORK
[Attached]

Ella Grand
Proposed Senior Housing
3.56 Acres at 2077 S. Gessner Road, Houston, TX

What is proposed?

Houston DMA Housing II, LLC is proposing the development of 128 units of mixed-income senior housing on approximately 3.56 acres of land located in West Houston, at the intersection of S. Gessner Road and Ella Lee Lane. This is an excellent location, within a ½ mile walking distance from Woodlake Square, an extensive shopping center that contains Randall's Grocery Store, a Wells Fargo Bank, as well as various restaurants and other neighborhood amenities. The site is also within several miles of the Galleria, which offers unlimited retail shopping and is a major job center. The access to other parts of Houston from this location is exceptional, as the site is on South Gessner which provides direct access to IH-10 to the north, and to Westheimer Road, which provides direct access to the medical center and downtown Houston to the west.

Ella Grand is designed as a single 4-story building with surface parking. Ella Grand will include apartments in a mix of one-bedroom and two-bedroom. All apartment homes will offer 9-foot ceilings, full appliance packages, washer/dryer hookups, ceiling fans, and energy efficient features. The community amenities will include a community room for large social events, a library/game room, a fitness center, and a theater. Although the development site is not located within the floodplain, nor has it experienced flooding in the past 10 years, the project will be designed and constructed with resilient building measures to mitigate future weather events.

The apartments will be affordable to a range of incomes, with 12 units rent-restricted for those households with incomes at or below 30%AMI, and 103 units rent-restricted for those households with incomes between 50% and 60% AMI. Ella Grand will offer 13 market rate units many with rents structured to be affordable to households at 80% AMI and above. Although these income limits are updated annually, currently the income ranges are from approximately \$20,000 for a one-person household to \$55,000 for a two-person household. Additionally, 5% of the units will be designated for persons with Special Housing Needs, and an additional 2% of the units designated for persons experiencing homelessness.

Who makes up our market?

- Older adults, many on fixed incomes, who currently live in the community.
- Empty nesters looking to downsize from their single-family homes, thereby freeing up single family housing stock for the next generation.
- Out-of-town or out-of-state seniors who want to move to Houston to be closer to their children and/or grandchildren.

Why is this development important?

Benefits to the City/County/Neighborhood:

- First year economic impact in terms of construction related activity and ripple effect of spending income;
- Ongoing, annual effect of occupied units in terms of income and property and sales tax;
- Staves off displacement of older residents from established neighborhood and communities.

Benefits to the Residents:

- Stable, high quality and affordable senior living in a high opportunity area, near major thoroughfares, a grocery store and pharmacy, and other neighborhood amenities.
- Opportunity for older resident to stay in their existing neighborhood for older residents who can no longer maintain a single-family home or afford rising property taxes.

Community Involvement

DMA is committed to working with area neighborhood organizations to obtain their feedback about this proposed development. To this end, DMA has met with the Briar Meadow HOA which does not contain our site but is located nearby and had multiple discussions with representatives of the Mid-Super Neighborhood whose boundaries contain our site, but are not “on record with the state or county,” as required by the QAP. This neighborhood has an architectural review process to which DMA will adhere.

DMA has the support of the City of Houston City Council and State Representative Gene Wu.

Who is the development team?

DMA Development Company, LLC (“DMA”) is an Austin-based real estate development company with more than a quarter of a century of experience in affordable housing and is widely recognized in Texas as the “go to” firm for creative, affordable living communities. DMA has developed more than 31 properties in two states (Texas and Georgia) and in the District of Columbia, and currently has a portfolio of more than 2,500 units which it self-manages. In recent years, DMA has developed a singular reputation for the quality of its product and a track record of successfully developing award-winning, mixed-use, mixed-income developments.

Who will manage this development?

DMA Properties, LLC, which is under the same ownership as DMA Development Company, will manage this property for the long term. DMA manages its own properties because the success of our company-wide business model depends on top tier management. As a result, DMA Properties, LLC enjoys one of the best reputations in our housing industry.

EXHIBIT E
CONSTRUCTION SCHEDULE
[Attached]

Activity ID	Activity Name	Original Start	Finish	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
A1.RP.270	TrussDecking - Area C	12-30-Jun-23	11-Jul-23																						
A1.RP.290	Roof TrussDecking - Area A	10-13-Jul-23	21-Jul-23																						
Dry-In		42-22-Jul-23	01-Sep-23																						
Area A		42-22-Jul-23	01-Sep-23																						
AS.DI.100	ZP Wall Sheathing & Tape	14-22-Jul-23	04-Aug-23																						
AS.DI.110	Trvek WRB	14-06-Aug-23	18-Aug-23																						
AS.DI.120	Windows	14-19-Aug-23	01-Sep-23																						
MEP Rough-In & Insulation		11-02-Sep-23	12-Sep-23																						
Area A		11-02-Sep-23	12-Sep-23																						
Level 4		11-02-Sep-23	12-Sep-23																						
AA.M.180	MEP Rough Inspection	3-02-Sep-23	04-Sep-23																						
AA.M.190	Wall Insulation	8-05-Sep-23	12-Sep-23																						
Hang Tape/Floor/Texture/Gypcrete		34-13-Sep-23	30-Oct-23																						
Area A		34-13-Sep-23	30-Oct-23																						
Level 4		34-13-Sep-23	30-Oct-23																						
AA.WF.110	Hang Drywall	8-13-Sep-23	22-Sep-23																						
Level 3		8-13-Sep-23	22-Sep-23																						
AA.WF.500	Hang Drywall	8-26-Sep-23	04-Oct-23																						
Level 2		8-26-Sep-23	04-Oct-23																						
AA.WF.540	Hang Drywall	18-05-Oct-23	30-Oct-23																						
AA.WF.550	Drywall Tape & Texture	8-17-Oct-23	24-Oct-23																						
AA.WF.560	Prime Paint/WalkCeilings	3-25-Oct-23	27-Oct-23																						
AA.WF.570	Gypcrete	3-28-Oct-23	30-Oct-23																						
Interior Finishes		174-31-Oct-23	21-Nov-24																						
Level 2		92-31-Oct-23	30-Jan-24																						
Level 2		82-31-Oct-23	05-Jan-24																						
C4.100	Doors & Trim	9-31-Oct-23	08-Nov-23																						
C4.110	Paint	9-09-Nov-23	17-Nov-23																						
C4.140	MEP Trim	8-18-Nov-23	25-Nov-23																						
C4.200	Power Set Condensers & AC Start Ups	14-28-Nov-23	09-Dec-23																						
C4.210	Drywall Punch	3-10-Dec-23	12-Dec-23																						
C4.220	Viny Plank	7-19-Dec-23	19-Dec-23																						
C4.230	Second Trim & Hot Check	6-20-Dec-23	25-Dec-23																						
C4.240	Rough Clean & MEP Trim Finish	6-28-Dec-23	31-Dec-23																						
C4.250	Appliances - Major	6-01-Jan-24	06-Jan-24																						
C4.260	Appliances - Minors	2-07-Jan-24	08-Jan-24																						
C4.280	Spring Doors & Weather Stripping	1-09-Jan-24	09-Jan-24																						
C4.290	Carpet & Transition Strips	1-10-Jan-24	10-Jan-24																						
C4.310	Final Punch & Final Clean	10-11-Jan-24	20-Jan-24																						
Level 1		10-21-Jan-24	30-Jan-24																						
C4.540	Final Punch & Final Clean	10-21-Jan-24	30-Jan-24																						
Area B		48-31-Jan-24	10-Mar-24																						
Level 2		10-31-Jan-24	05-Feb-24																						
Level 3		10-10-Feb-24	18-Feb-24																						
Level 2		10-20-Feb-24	28-Feb-24																						

█ Remaining Level of Effort
 █ Actual Work
 █ Remaining Work
 ◆ Critical Remaining Work
 ◆ Milestone

Page 2 of 3 TASK filter: Critical © Oracle Corporation

ATTACHMENTS TO LOAN AGREEMENT

- A. City's Restrictive Covenants
- B. Borrowers' Note
- C. Borrower's Deed of Trust
- D. Financing Statements
- E. Reserved
- F. Reserved
- G. Construction Completion Guaranty
- H. Reserved
- I. Intercreditor Agreement
- J. Reserved
- K. Assignment of Property Management Agreement
- L. Assignment of Architect's Contract, Plans and Specifications, and Consent
- M. Assignment of Construction Contract
- N. Environmental Indemnity Agreement
- O. Form of the Performance Bond, Maintenance Bond, and Payment Bond
- P. Reserved

**ATTACHMENT A
TO LOAN AGREEMENT
RESTRICTIVE COVENANTS**

RESTRICTIVE COVENANTS

THESE RESTRICTIVE COVENANTS ("Declaration") are executed this _____ day of _____, 20____, by **Houston DMA Housing II, LLC**, a Texas limited liability company ("Owner").

RECITALS

Owner has title to certain land described on **EXHIBIT A** attached hereto and incorporated herein by reference, together with any improvements situated thereon or to be constructed thereon, located at 2077 South Gessner Road, Houston, Harris County, Texas 77063 (said land and improvements being hereinafter collectively referred to as the "Property" or the "Project").

Pursuant to a certain Loan Agreement ("City Loan Agreement") by and between the City of Houston ("City") and Owner effective as of the date of this Declaration, the Owner has agreed to comply with certain occupancy and rent restrictions on the Property for the Affordability Period (as defined herein), and, in consideration of the mutual benefits to the City and Owner set out in the City Loan Agreement, Owner has agreed to execute this Declaration to further evidence its agreement to comply with such restrictions.

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

ARTICLE I

DEFINITIONS

Section 1.1 General. Capitalized terms used in this Declaration shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Declaration.

a. Affordability Period shall mean the forty (40) year period, which commences upon Project Completion, as defined in the City Loan Agreement, during which all Designated Units in the Project must remain affordable (in accordance with the provisions of Section 3.1 hereof) without regard to the term of the City Loan Agreement or transfer of ownership of the Project (the "City Affordability Requirements"). The Affordability Period includes a twenty (20) year HUD required affordability period as set forth in 83 Fed. Reg. 5844 and 83 Fed. Reg. 40314 (the "HUD Affordability Requirements"), in addition to a supplemental twenty (20) year affordability period required by the City. While the Owner's obligation to comply with the HUD Affordability Requirements and related obligations shall end at the close of the initial twenty (20) year affordability period, the Owner shall be required to comply with the City Affordability Requirements for forty (40) years, as may be extended, in accordance with this Declaration.

b. City is defined in the preamble to this Declaration.

c. City Loan shall mean the loan made by the City to Owner in the original principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00), the proceeds of which were utilized by Owner to partially finance construction of the Project.

d. City Loan Agreement shall mean that certain loan agreement by and between the City and Owner, which governs the City Loan.

e. City Loan Documents shall mean all of the documents executed by Owner that govern, secure, and/or evidence the City Loan, including without limitation, the City Loan Agreement and this Declaration.

f. Designated Unit(s) shall mean those units in the Project which have been designated by the Owner and approved by the Director as subject to all occupancy, rent and affordability requirements contained in the City Loan Agreement and this Declaration. The Designated Units for the Project covered by this Agreement shall consist of sixty-six (66) Project units, as more particularly described in Article III hereof, and which may "float" within the Project.

g. Director shall mean the Director of the City's Housing and Community Development Department or any other person that the Director may designate to monitor compliance with this Declaration.

h. Float means that the location of the Designated Units may vary within the Project. The income eligible tenants must occupy the Designated Units. If at any time during the Affordability Period the income of the tenant household increases above the threshold eligible area median income level for which the Designated Unit has been designated, then Owner must substitute said unit with the next available comparable unit and house a household whose income is consistent with the area median income for the Designated Unit in which the tenant household became over-income.

i. GLO means the General Land Office of the State of Texas.

j. HUD shall mean the United States Department of Housing and Urban Development.

k. Income and/or Family Income or any similar term, including without limitation, annual income, adjusted income, monthly income and monthly adjusted income shall have the meanings assigned to such terms in 24 CFR Part 5.

l. LMI Persons shall mean households whose annual incomes do not exceed eighty (80%) percent of the area median income, as determined by HUD with adjustments for family size.

m. Owner is defined in the preamble to this Declaration.

n. [reserved].

o. [reserved].

p. Project shall mean the land described in **EXHIBIT A** together with all buildings and other improvements located thereon. Project shall also include all personal property of the Owner located on, incorporated into, or used in connection with the land and improvements, including without limitation, all appliances, air conditioning, heating, ventilation, plumbing and electrical fixtures and equipment.

q. Regulations mean all federal regulations applicable to the Project, including, without limitation, any federal or state regulations related to any loans or grants made pursuant to or in connection with the HUD Community Development Block Grant Disaster Recovery program, as amended from time to time as administered by the GLO.

Section 1.2 Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural, and the masculine shall include the feminine or neuter and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Declaration their proper meanings.

ARTICLE II

USE AND OCCUPANCY OF THE PROPERTY

Section 2.1 Use and Occupancy of the Property. During the Affordability Period, Owner will maintain the Designated Units located at the Property as multi-family rental housing for qualified LMI Persons and will rent or hold available for rental sixty-six (66) Designated Units on a continuous basis.

a. During the Affordability Period, Owner will make continuously available for occupancy each and every Designated Unit in the Project as provided in Section 3.1 below.

b. The determination of whether the income of a family or individual occupying or seeking to occupy a Designated Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Designated Unit. Thereafter, such determinations shall be made at least annually on the basis of an examination or reexamination of the current income of the family or individual.

ARTICLE III

RENT

Section 3.1 Designated Units; Compliance With Affordability Requirements.

a. The Director has determined that the number of Designated Units for the Project covered by this Agreement shall consist of sixty-six (66) units, being at least fifty-one percent (51%) of the one hundred twenty-eight (128) total residential units in the Project, the location of which may float during the Affordability Period.

b. With respect to the Designated Units, Owner shall comply with the following affordability requirements:

- (1) Each of the Designated Units shall be rented or be available for rent only to the City's LMI Persons, being those households whose gross income does not exceed eighty percent (80%) of the Area Median Income ("AMI"), as determined by HUD.
- (2) Designated Units shall be rent restricted based upon the following criteria:

- a. thirteen percent (13%) or nine (9) of the Designated Units shall be restricted to households at rents that do not exceed thirty percent (30%) of AMI.
 - b. thirty-seven percent (37%) or twenty-five (25) of the Designated Units shall be restricted to households at rents that do not exceed fifty percent (50%) of AMI.
 - c. fifty percent (50%) or thirty-two (32) of the Designated Units shall be restricted to households at rents that do not exceed sixty percent (60%) of AMI.
- (3) The rental amount for each Designated Unit shall not exceed the applicable maximum rental limitations published annually by HUD for the low-income housing tax credit program, adjusted for household and unit size and applicable to the City, as such rental limitation is further described at 26 U.S.C. §§ 42(g)(2)(A) and (B).
 - (4) The location of the Designated Units shall "float" within the Project. No later than ninety (90) days prior to the initiation of rental activities at the Project, Owner shall contact the Director to establish a procedure for identifying the initial Designated Units to be occupied by qualified tenants and a procedure for identifying the floating Designated Units on a periodic basis thereafter.

c. The Owner will not refuse to lease a Designated Unit to a recipient of federal housing assistance or to the holder of a document evidencing participation in a tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of participation, rental voucher, or comparable tenant-based assistance document (unless such rental is in conflict with other applicable federal or state requirements).

ARTICLE IV

ADMINISTRATION

Section 4.1 Tenant Lease Requirements. The Owner shall enter into a lease agreement (in the form approved by the Director) with each new or renewal tenant ("Tenant") of the Project's Designated Units. The term of each lease shall not be less than one (1) year unless the Owner and the Tenant mutually agree otherwise. No lease of any Designated Unit may contain any of the following provisions:

- a. An agreement by the Tenant to be sued, to admit guilt or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
- b. An agreement by the Tenant that the Owner may take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties. This provision does not apply to an agreement by the Tenant concerning disposition of personal property remaining in a housing unit in the Project after the Tenant has moved out of a unit. The Owner may dispose of this personal property in accordance with applicable state law;

- c. An agreement by the Tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- d. An agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;
- e. An agreement by Tenant that the Owner may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or prior to a court decision regarding the rights of the parties;
- f. An agreement by the Tenant to waive any right to a trial by jury;
- g. An agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; or
- h. An agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.

Section 4.2 Limitations on Termination of Leases. Owner shall not terminate any tenancy or refuse to renew the lease of any Tenant in the Project except for one of the following reasons: (a) violation of the terms and conditions of the lease; (b) violation of applicable federal, state or local law; (c) if the Project is a transitional housing facility, for completion of the transitional housing tenancy period established by mutual agreement of the Owner and the City; or (d) other good cause. Any termination or refusal to renew must be preceded by the Owner providing the affected Tenant with not less than thirty (30) days prior written notice specifying the grounds for such termination or refusal to renew.

Section 4.3 [reserved].

Section 4.4 Annual Reevaluation of Rents. For purposes of monitoring compliance with the affordability requirements of Section 3.1 above, Owner shall, prior to the occupancy of any Tenant in a Designated Unit and thereafter annually, submit to the City for approval, the rents proposed by the Owner for the coming year as well as the monthly allowances proposed by the Owner for the coming year for utilities and services to be paid by the Tenant. In connection with the Owner's annual submittal of proposed rents, the Owner shall re-examine the income of each Tenant household living in a Designated Unit. The maximum monthly rent must be recalculated by the Owner in accordance with the requirements of Section 3.1 above and reviewed and approved by the City. Any increase in rents for Designated Units is subject to the provisions of the leases in any event, and the Owner must provide Tenants not less than thirty (30) days prior written notice before implementing any increase in rents.

Section 4.5 Maintenance of Project. Owner must maintain the Project in compliance with (i) the City's Minimum Property Standards as defined in the City Loan Agreement and (ii) all applicable local codes, rehabilitation standards, ordinances and zoning ordinances (including without limitation, the City's Building, Housing and Fire Codes).

Section 4.6 Maintenance of Documents. All tenant lists, applications, leases, waiting lists, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property,

and shall be maintained in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the City, GLO or other federal agency.

Section 4.7 Compliance Review. The City or its designee will monitor Owner's compliance with the requirements of this Declaration. In conducting its compliance review the City will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring and audit reports.

Section 4.8 Releases. Upon the expiration of the Affordability Period as provided in Section 1.1(a) hereof, Owner shall request that the City execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Declaration and the other Loan Documents.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF OWNER

Section 5.1 Representations and Warranties. Owner represents and warrants to the City that:

a. Valid Execution. Owner has validly executed this Declaration and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity:

- (i) to enter into this Declaration;
- (ii) to carry out Owner's obligations as described in this Declaration; and
- (iii) to assume responsibility for compliance with all applicable local, state and federal rules and regulations, including, without limitation, the Regulations.

b. No Conflict or Contractual Violation. To the best of Owner's knowledge, the making of this Declaration and Owner's obligations hereunder:

- (i) will not violate any contractual covenants or restrictions (A) between Owner and any third party or (B) affecting the Property;
- (ii) will not conflict with any of the instruments that create or establish Owner's authority;
- (iii) will not conflict with any applicable public or private restrictions;
- (iv) do not require any consent or approval of any individual or entity which has not already been obtained; and
- (v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

c. No Litigation. No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

d. No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or relief for debtors.

Section 5.2 INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, GLO AND HUD FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE CITY, GLO OR HUD AS A RESULT OF ANY MATERIAL INACCURACY IN ANY OF THE OWNER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1.

ARTICLE VI

ENFORCEMENT AND REMEDIES

Section 6.1 Remedies of the City.

a. A default under this Declaration or the City Loan Agreement, shall constitute a default under the City Loan and shall entitle the City to exercise all of its rights and remedies under the City Loan Documents. The rights set forth in this Section 6.1 are in addition to any rights the City may have under the City Loan Documents, at law or in equity. In the event of a default hereunder, Owner shall have the cure rights provided it under Section 10.1.2 of the Loan Agreement.

b. This Declaration shall be enforceable by actions at law or in equity including, without limitation, actions for specific performance by the City of Houston, its successors and assigns and/or one or more third-party beneficiaries. For the purpose of this Restrictive Covenant, a third-party beneficiary shall be any member of a Low-Income Family meeting the eligibility requirements for a Designated Unit under Section 3.1 of this Declaration.

c. Each right, power and remedy of the City provided for in this Declaration now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise and the exercise or beginning of the exercise by the City of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City of any or all such other rights, powers or remedies.

d. Owner shall be fully and personally liable and subject to legal action to the full extent of the losses of the City caused by (a) misappropriation of insurance proceeds; (b) misappropriation of proceeds from condemnation or a conveyance in lieu of condemnation; (c) misappropriation of tenant security deposits or other refundable deposits of tenants; (d)

misappropriation of rents and other payments received from leases after an Event of Default; (e) waste or damage to the Project as a result of the intentional misconduct or gross negligence of Owner; (f) for all obligations and indemnities of Owner under the City Loan Documents relating to hazardous or toxic substances or compliance with environmental laws; and (g) for fraud or material intentional misrepresentation by Owner.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Amendments. This Declaration may not be amended, modified or rescinded except pursuant to written instrument executed by Owner and approved by the City.

Section 7.2 Notices. All notices required or permitted to be given under this Declaration must be in writing and will be deemed to have been duly given if delivered personally or three (3) days after mailed postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

If mailed or delivered
to the City:

CITY OF HOUSTON
Housing & Community
Development Department
2100 Travis Street, 9th Floor
Houston, TX 77002
Attention: Director

If mailed or delivered
to Owner:

Houston DMA Housing II, LLC
c/o DMA Development Company, LLC
4101 Parkstone Heights Drive, Suite 310
Austin, TX 78746
Attention: Janine Sisak, SVP / General Counsel

With a copy to:

RBC Community Investments, LLC
600 Superior Avenue, Suite 2300
Cleveland, OH 44114
Attention: General Counsel

With a copy to:

Coats Rose, P.C.
2700 Via Fortuna, Terrace 2, Suite 350
Austin, TX 78746
Attention: Scott A. Marks

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3 Governing Law and Venue. This Declaration shall be construed and interpreted in accordance with the laws of the City, the State of Texas, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue shall be proper for any dispute with respect to this Declaration in the

United States District Court for the Southern District of Texas or the state circuit court sitting in Harris County, Texas.

Section 7.4 Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.5 Binding Effect; Covenants Running with the Land. During the Affordability Period, this Declaration and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the City and its successors and shall pass to and be binding upon Owner's assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Declaration and the covenants, reservations, et al., shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interest; provided, however, that upon expiration of the Affordability Period this Declaration and said covenants, reservations and restrictions shall expire. During the Affordability Period, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Declaration to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the City to enforce this Declaration.

Section 7.6 Counterparts. This Declaration and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy.

Section 7.7 Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Declaration as set forth in the text.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned have executed this Declaration to be effective as of the _____ day of _____, 20__.

OWNER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by Diana McIver, the Manager of DMA Ella Grand, LLC, a Texas limited liability company, the managing member of Houston DMA Housing II, LLC, a Texas limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC - THE STATE OF TEXAS

Printed Name of Notary

My commission expires:_____.

ATTACHMENTS:

EXHIBIT "A" Property Description

EXHIBIT A

Property Description

***THE LEGAL DESCRIPTION WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.**

ATTACHMENT B
TO LOAN AGREEMENT

NOTE

NOTE

\$12,000,000.00

_____, 20__

I. PROMISE TO REPAY.

FOR VALUE RECEIVED, HOUSTON DMA HOUSING II, LLC, a Texas limited liability company ("Maker"), hereby agrees and promises to pay to the order of **THE CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas ("Payee"), at City Hall Annex, 900 Bagby, City of Houston, Harris County, Texas 77002 or at any other place as the holder hereof may from time to time in writing designate, on the Maturity Date, in coin or currency, which at the time of payment shall constitute legal tender of the United States of America, the principal sum of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00), or so much thereof as may be advanced, together with interest on the principal balance from time to time remaining unpaid at the rates set forth below.

The loan ("Loan") evidenced by this Note is subject to the terms and conditions of that one certain Loan Agreement ("Loan Agreement") between Maker and Payee of even date herewith. All capitalized terms used herein that are not defined herein shall have the same meaning as given in the Loan Agreement.

The proceeds of the Loan will be used to partially fund the construction, repair, renovation and/or rehabilitation of certain improvements located on the property located at 2077 South Gessner Road, Houston, Texas 77063 ("Project") which houses or is to house low- or moderate-income persons. Maker owns the Project and the real property thereunder and is therefore referred from time to time to in this Note as "Owner." Funding for the City Loan is being provided to the City pursuant to 2017 Community Development Block Grant Disaster Recovery program funds awarded by the United States Department of Housing and Urban Development through the Texas General Land Office ("GLO") and is subject to the terms and conditions of a contract between GLO and the City. The Loan is a community development activity undertaken by the City and authorized under Chapter 373 or Chapter 374 of the Texas Local Government Code.

II. TERM.

The term of the Loan shall commence on the date on which Loan Documents (as defined in the Loan Agreement) are executed (the "Closing Date") and shall mature upon the last day of the Affordability Period (as defined in the Loan Agreement) (the "Maturity Date"). This Note is secured by a Deed of Trust executed by Owner to Keith Bynam, Trustee, covering fee ownership interest in the Project, together with the buildings and other improvements now or hereafter erected thereon and the personal property attached to or used in connection therewith.

III. PAYMENTS.

No payment of principal or interest shall accrue or be payable under this Note during the Approved Construction Period except in the event of (a Default (as hereinafter defined) during the Term of this Note. Upon the expiration of the Affordability Period (as defined in the Loan Agreement), if no Default has occurred which remains uncured, the amount of the deferred principal and interest shall be deemed paid. The Maturity Date is the date of expiration of the Affordability Period. Upon the maturity of this Note, if no Default has occurred which remains uncured, the amount of any remaining deferred principal (after any principal repayments made as a result of sale or refinancing of the Property to the extent required by the terms of this Note or the Loan Agreement) shall be deemed paid upon the Maturity Date. Upon the event of a Default, the outstanding deferred principal balance shall be immediately due and payable, without notice or opportunity to cure. Prior to Project Completion, interest will not be charged on the principal and deferred interest unless there is a Default then existing.

Notwithstanding the foregoing, after the expiration of the Approved Construction Period until the Maturity Date, interest shall accrue at the rate of one percent (1.0%) per annum on the outstanding principal balance of this Note and Maker shall pay an annual installment equal to the lesser of (i) one percent (1%) annually on the outstanding balance of the Loan plus accrued unpaid interest, if any, or (ii) fifty percent (50%) of Net Cash Flow. The annual interest payment or non-payment of such interest shall be accompanied by evidence acceptable to the Director documenting available Net Cash Flow or lack of available Net Cash Flow. Upon the expiration of the Affordability Period (as defined in the Loan Agreement), if no Default has occurred which remains uncured, the amount of the deferred principal and interest shall be deemed paid. The Maturity Date is the date of expiration of the Affordability Period.

For purposes of this provision available Net Cash Flow shall mean net cash flow as defined as follows:

Net Cash Flow shall mean all income and revenues actually received by Owner from the lease of the Project Units and other improvements, and all other income and revenues actually received by Owner in connection with the Project, excluding and deducting therefrom all (1) Operating Expenses, including any debt service payments related to the Senior Loan (but not any subordinate loans); (2) security, pet or cleaning deposits, if any; (3) payments from the Replacement Reserve or from Operating Reserves; (4) payments or reimbursements from insurers or other third parties and used or to be used for restoration, repair or remodeling of any of the Project Units or other improvements; (5) capital contributions, grants, proceeds of any permitted sale, transfer, exchange, refinancing or other disposition or encumbrance of all or a portion of the Project; (6) condemnation proceeds and awards in place of them; (7) tax reduction or abatement proceeds; (8) City Loan proceeds; (9) deposits made to operating reserves and to the replacement operating reserves; and (10) payments of the deferred developer fee; (11) costs of residential services; (12) social services fees; (13) any tax credit adjustments, any asset management fees due to either the Tax Credit Investor or an investor member to the extent such fee is authorized under the Approved Final Operating Budget and loans from the investor member of Owner related to the Project (to the extent that repayment of such loan (a) is not secured by the Project and (b) is made for the purposes of covering assumed tax liability, tax credit shortfalls and operating deficits under the Approved Final Operating Budget for the applicable year and not for the purposes of facilitating distributions to the partners of Owner).

IV. DEFAULT; ACCELERATION.

If a Default exists, the entire debt represented by this Note, consisting of the outstanding principal balance and all accrued interest thereon, shall, at the option of the holder hereof, become immediately due and payable, and except as provided in the Loan Agreement, without notice, presentment for payment, demand, notice of nonpayment, notice of intention to accelerate, acceleration, or other notices of any type which are specifically waived, time being of the essence hereof. Payee's rights under this paragraph shall be in addition to any other rights or remedies it may have under any of the Loan Documents, at law or in equity, to enforce Maker's obligations under the Loan Documents. During the continuance of any Default, interest shall accrue on the outstanding balance of this Note at a rate equal to the lower of the highest rate permitted by applicable law or ten percent (10%) per annum ("Default Rate"). This Note shall be non-recourse to the Maker. For purposes of this Note, the term "Default" shall mean a default in payment of the Note or a default under the terms of this Note, the Deed of Trust, the Loan Agreement, or any of the other Loan Documents that continues beyond the expiration of all applicable notice and cure periods.

V. PREPAYMENT/MODIFICATION.

THIS NOTE MAY NOT BE PREPAID OR MODIFIED WITHOUT THE PRIOR WRITTEN CONSENT OF THE PAYEE, WHICH CONSENT MAY BE WITHHELD OR GRANTED IN THE SOLE DISCRETION OF THE PAYEE.

VI. APPLICATION OF PAYMENTS.

Each payment made on this Note shall be credited first to accrued, unpaid interest and the remainder to principal.

VII. WAIVER.

Maker hereby waives presentment for payment, protest and demand, notice of protest, demand and dishonor, and non-payment of this Note, and except as otherwise specified in any of the Loan Documents, waives notice of default, notice of acceleration, and notice of intent to accelerate, and hereby consents that the holder hereof may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the debt evidenced by this Note, at the request of any other person liable hereon, and such consent shall not alter nor diminish the liability of any person. The failure to exercise any remedy available to Payee shall not be deemed to be a waiver of any rights or remedies of Payee under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part, unless Payee specifically, unequivocally and expressly agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change or modification is sought.

VIII. COSTS OF COLLECTION; ATTORNEYS' FEES.

Maker agrees to pay all costs of collection, including reasonable attorneys' fees, if the principal of this Note or any payment on the principal or interest hereon is not paid at the respective maturity and to pay all reasonable costs including, attorneys' fees and court costs, if it becomes necessary to protect the security hereof, whether suit be brought or not, if a Default exists.

IX. USURY LIMITATIONS.

No provision of the Loan Agreement, this Note, or any instrument securing payment of or relating to the indebtedness, shall require the payment or permit the collection of interest in excess of the maximum rate allowed by applicable law ("Maximum Rate"). If any excess of interest in such respect is herein or in any other instrument provided for, or shall be adjudicated to be so provided for herein or in any other instrument, the provisions of this paragraph shall govern and neither Maker nor any guarantor or endorser of this Note nor their respective heirs, personal representatives, successors, or assigns shall be obligated to pay such interest to the extent it is in excess of the Maximum Rate. Any fees or other sums that under applicable law are deemed to constitute interest shall be or other sums so deemed interest shall be amortized, prorated, allocated and spread in equal parts over the full stated term of the loan evidenced hereby.

If the maturity of this Note is accelerated for any reason before the Maturity Date stated, or in the event of any prepayment by Maker, or in any other event, earned interest may never exceed the Maximum Rate, computed from the date of disbursement of the loan evidenced hereby until payment, and any unearned interest otherwise payable hereunder that is in excess of the Maximum Rate shall be cancelled automatically as of the date of the acceleration, prepayment, or other event, and if previously paid, shall at the option of the holder of this Note be either refunded to Maker or credited on the principal of this Note, provided that, if the holder elects to credit the unearned interest on the principal of this Note, and such unearned interest exceeds the principal balance, the excess shall be refunded to Maker. Any interest computation under this Note and the Loan Agreement shall be at not more than the Maximum Rate upon the portion of the face amount hereof representing principal that remains unpaid from time to time, it being the intention of the parties hereto to conform strictly to the laws applicable to the loan evidenced by this Note and the Loan Agreement, and should it be held that interest payable under this Note and the Loan Agreement is in excess of the Maximum Rate, the interest chargeable hereunder shall be reduced to the maximum amount permitted by law.

X. LATE PAYMENTS

If a payment is not received within ten (10) days of the due date, a late payment fee of ten percent (10%) of the payment amount will be charged.

XI. GOVERNING LAW AND VENUE

This Note is made in the State of Texas and shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to conflicts of laws principles. Venue for any disputes relating in any way to this Note shall lie exclusively in Harris County, Texas.

XII. SUCCESSORS

This Note shall be binding upon the parties hereto and their respective successors and assigns.

XIII. JURY WAIVER

MAKER AND PAYEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

XIV. ENTIRE AGREEMENT

THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

XV. RECOURSE

This Note shall be non-recourse to its Maker.

If at any time any payment received by Payee hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law (as defined below), then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Payee and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand. For purposes of this Note, "Debtor Relief Law" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts or similar laws affecting the rights of creditors.

[EXECUTED ON THE FOLLOWING PAGE]

**Signature Page to
Promissory Note**

EXECUTED to be effective as of the date first written above.

MAKER:

Houston DMA Housing II, LLC,
a Texas limited liability company

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

GUARANTOR:

DMA Development Company, LLC,
a Texas limited liability company

By: _____
Name: Diana McIver
Title: Manager

**ATTACHMENT C
TO LOAN AGREEMENT**

**DEED OF TRUST, SECURITY AGREEMENT
AND FINANCING STATEMENT**

When recorded, return to:

THE CITY OF HOUSTON

P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

From

Houston DMA Housing II, LLC,
a Texas limited liability company,
as Grantor

to

Keith Bynam,
as Trustee

for the benefit of

City of Houston, Texas,
a home-rule city organized under the laws of the State of Texas,
as Beneficiary

**DEED OF TRUST, SECURITY AGREEMENT
AND FINANCING STATEMENT**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

That in consideration of certain indebtedness hereinafter described, justly owing by **Houston DMA Housing II, LLC**, a Texas limited liability company ("**Grantor**"), to **the City of Houston, Texas**, a home-rule city organized under the laws of the State of Texas ("**Beneficiary**"), and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration paid to the Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor has GRANTED, ASSIGNED, TRANSFERRED and CONVEYED, and does hereby GRANT, ASSIGN, TRANSFER and CONVEY unto Keith Bynam, as trustee ("**Trustee**"), all of the following described property is collectively referred to herein as the "**Property**":

A. All of Grantor's right, title and interest, whether now or hereafter arising, in and to the real property situated in Harris County, Texas, described in **EXHIBIT A** hereto, together with all right, title and interest now and/or hereafter owned by Grantor, its successors and assigns, in the whole or any part of the above described real property and/or any street or road adjacent and/or contiguous to the above described real property ("**Land**").

B. All of Grantor's right, title and interest, whether now or hereafter arising, in and to all buildings and other improvements now or hereafter placed on the Land, as well as all appurtenances, betterments and additions thereto ("**Improvements**"); all and singular the rights, privileges, hereditaments and appurtenances in anywise incident or appurtenant to the Land and Improvements; and the rents, revenue, profits and income from the Land and Improvements.

C. All of Grantor's right, title and interest, whether now or hereafter arising, in and to any and all plumbing, electrical, heating, cooling and other equipment and all building materials and other goods of every type, kind and character that are now or hereafter situated upon the Land and which (i) are intended to be incorporated into the Improvements or (ii) are now, or hereafter become, fixtures attached to the Land or the Improvements; any and all other goods of every type, kind and character, including without limitation, all appliances, furniture, fixtures, inventory and equipment now owned or hereafter acquired by Grantor that are now or hereafter situated upon the Land (whether or not situated within or attached to the Improvements) and that facilitate the use and occupancy of the Improvements for the purpose for which they were or are to be constructed; all plans and specifications for the Improvements, all rights of Grantor under all existing and future leases, construction, maintenance and other contracts covering or relating to the Land or the Improvements, all tenants deposits made pursuant to or in connection with such leases, all rights of ingress and egress, easements, water and wastewater rights, and to the extent assignable, all licenses, permits, franchises, certificates, accounts, instruments, chattel paper, documents, agreements, contracts, including without limitation any agreements with the United States Department of Housing and Urban Development (to the extent assignable), and general intangibles, and all rights of Grantor in and to any development rights relating to the Land or the Improvements (including, without limitation, trade names and symbols used in connection therewith and any deposits with utility companies) and all other rights and privileges obtained in connection with, relating to or associated with the Land or the Improvements (collectively, the "**Personalty**") and all proceeds of the Personalty.

D. To the extent the assignment thereof is enforceable under applicable law, all of Grantor's right, title and interest, whether now or hereafter arising, in and to any tax refunds, including interest thereon, tax rebates, ad valorem tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property but excluding any Housing Tax Credits available pursuant to Section 42 of the Internal Revenue Code, as amended.

E. All of Grantor's right, title and interest in the proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent

domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages.

F. All of Grantor's right, title and interest, if any, in and to all substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores (collectively, "**Minerals**").

G. All funds of Grantor that may be deposited with Beneficiary at any time and from time to time for any purpose, which funds shall be deemed to be part of the Personalty for purposes hereof. In the event of a conflict between the terms and conditions of this instrument and the instrument under which Beneficiary holds any funds of Grantor, the terms and conditions of the latter instrument shall prevail.

TO HAVE AND TO HOLD the Property unto the Trustee and the assigns of the Trustee, and Grantor does hereby bind Grantor and the successors and assigns of Grantor, to **WARRANT AND FOREVER DEFEND** all and singular the Property and title thereto unto the Trustee and unto the assigns of the Trustee, against every person or party whomsoever claiming or to claim the same, or any part thereof, subject, however, to the permitted encumbrances set forth on **EXHIBIT B** attached hereto, the Extended Use Agreement (as hereinafter defined) and the liens securing the Senior Note (as described below)(collectively, the "**Permitted Encumbrances**").

I.

SECURITY FOR PERFORMANCE OF OBLIGATIONS

This conveyance is made in trust, however, to secure the performance of all covenants and agreements contained in this Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") and that one certain Loan Agreement (the "**Loan Agreement**") executed or to be executed between Grantor and Beneficiary (which incorporates the terms of a certain other Loan Agreement between Grantor, Beneficiary and the City of Houston ("**City Loan Agreement**") relating to the Property) and the full and prompt payment when due (by lapse of time or otherwise), of the following indebtedness (the "**Indebtedness**"):

A. Loan. All sums, including principal, interest and attorneys' fees, called for in that certain promissory note (the "**Note**") executed by Grantor payable to the order of Beneficiary, in the principal amount of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00), which Note evidences that certain loan from Beneficiary to Grantor of the amount set forth in the Note (the "**Loan**"), and which Note bears interest at the rates therein stated and provides for acceleration of maturity should a Default (as defined in the Loan Agreement) occur.

B. Other Sums. All other sums owing by Grantor to Beneficiary or other holder(s) of any part of the Indebtedness or becoming due under the Loan Agreement or under the City Loan Agreement. (This Deed of Trust and all other instruments now or hereafter evidencing, governing or securing any part of the Indebtedness are hereinafter collectively referred to as the "**Loan Documents**").

C. Other Obligations. This Deed of Trust also secures Grantor's performance under certain Restrictive Covenants with respect to the Property executed by Grantor in connection with the City Loan Agreement.

II.

**PAYMENT OF THE INDEBTEDNESS;
DEFAULT; ENFORCEMENT OF TRUST**

A. Payments. If the Indebtedness is fully paid and if all of Grantor's covenants and agreements herein and in the Loan Agreement (including the incorporated provisions of the City Loan Agreement and the other Loan Documents are fully kept and performed, and if no Default then exists, then this conveyance shall thereupon become of no further force and effect and shall be released by Beneficiary or other holder(s) of the Indebtedness upon the written request and at the expense of Grantor, provided, however, this Deed of Trust will remain in place and outstanding until the expiration date of the Affordability Period under the Loan Agreement (as same may be extended).

B. Enforcement. But if any Default (as defined in the Loan Agreement) exists, the whole of the Indebtedness shall at the option of Beneficiary, without notice to Grantor or any other person, which notice is hereby waived, become immediately due and payable and thereupon, or at any time thereafter that the Indebtedness or any part thereof remains unpaid, it shall be the duty of the Trustee, or the Substitute Trustee, as hereinafter defined, at the request of Beneficiary, or the holder(s) of the Indebtedness, which request shall be presumed, to enforce this Deed of Trust and to sell as an entirety, or in parcels, by one sale or by several sales, held at one time or at different times, as the Trustee acting may elect (all rights to a marshaling of Grantor's assets, including Property, or to a sale in inverse order of alienation, being hereby expressly waived by Grantor), the Property in the county in which the Property, or a part of the Property to be sold, is situated (the "**County**") at such area at the courthouse designated by the Commissioner's Court of the County as the area where sales are to take place, or if no area is designated, at the door of the County Courthouse, each sale to be made on the first Tuesday of a calendar month between the hours of 10:00 A.M. and 4:00 P.M. to the highest bidder for cash at public auction, after both posting or causing to be posted written or printed notice of the time (including the earliest time at which the sale will occur), place, and term of sale at the door of the Courthouse of the County and filing or causing to be filed a copy of the notice in the Office of the County Clerk of the County, for at least twenty-one (21) days preceding the day of sale, and to execute and to deliver to the purchaser(s) at each such sale proper conveyance(s) of the property interest sold, with general warranty of title binding upon Grantor and the successors and assigns of Grantor; or Beneficiary or other holder(s) of the Indebtedness may foreclose or cause to be foreclosed the Lien of this Deed of Trust, in whole or in part, through judicial foreclosure or in any manner as may at any time be authorized under the statutes of the State of Texas. In addition, the holder(s) of the Indebtedness to which the power is related shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on each person obligated to pay the Indebtedness according to the records of the holder(s). Service of the notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of the holder(s) of the Indebtedness, in a post office or official depository under the care and custody of the United States Postal Service. The Affidavit of any person having knowledge of the facts to the effect that service was completed shall be prima facie evidence of the fact of service. No notice of the sale or sales other than that herein provided for need be given to Grantor or any other person or party, and any other notice is hereby waived. Beneficiary or other holder(s) of the Indebtedness shall have the right to become the purchaser at any sale to the same extent as any other party, being the highest bidder, and in lieu of paying cash may credit the amount of the bid upon the Indebtedness up to the full amount of the Indebtedness then unpaid.

C. Proceeds. The Trustee acting shall apply the proceeds arising from a sale pursuant to Section II.B above, first, to pay all reasonable expenses of the sale actually incurred, second, to reimburse Beneficiary for any expenses incurred by Beneficiary in protecting, administering or operating the Property after the occurrence of the applicable Default and prior to the foreclosure sale and third, to the payment of the Indebtedness (including all principal, interest and attorneys' fees owing as part of the Indebtedness). The proceeds of each sale paid to Beneficiary may be applied by Beneficiary on the Indebtedness in any order and manner as Beneficiary may elect. Any surplus funds from the foreclosure sale or sales hereunder shall be paid to Grantor or the person(s) lawfully entitled thereto.

III.

UNMATURED INDEBTEDNESS

If any Default exists, Beneficiary or other holder(s) thereof shall, in addition to any remedies available to Beneficiary at law or in equity, have the option to proceed with foreclosure in satisfaction of such item or items, either through the courts or by directing the Trustee, or the Substitute Trustee, as hereinafter provided for, to proceed as if under a foreclosure, conducting the sale as herein provided and without declaring the whole debt due, and if a sale is made because of such Default, the sale may be made subject to the unmatured part of the Indebtedness, but as to the unmatured part of the Indebtedness, this Deed of Trust shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness, it being the purpose hereof to provide for a foreclosure and sale of the Property, in whole or in part, for any matured portion of the Indebtedness without exhausting the power of foreclosure and the power to sell the Property, in whole or in part, for any other part of the Indebtedness subsequently maturing.

IV.

SUBSTITUTE TRUSTEE

In case of the resignation of the Trustee, or the inability (through death or otherwise), refusal or failure of the Trustee to act, or at the option of Beneficiary or the holder(s) of the Indebtedness for any other reason (which reason need not be stated), a substitute trustee ("**Substitute Trustee**") may be named, constituted and appointed by Beneficiary or the holder(s) of the Indebtedness, without other formality than an appointment and designation in writing; the appointment and designation shall be full evidence of the right and authority to make the same and of all facts therein recited; and this conveyance shall vest in the Substitute Trustee the title, power and duties herein conferred on the Trustee originally named herein and the conveyance of the Substitute Trustee to the purchaser(s) at any sale shall be equally valid and effective. The right to appoint a Substitute Trustee shall exist as often and whenever from any of said causes, the Trustee, original or Substitute, resigns, or cannot, will not, or does not act, or Beneficiary or the holder(s) of a majority of the Indebtedness desire to appoint a new Trustee. No bond shall ever be required of the Trustee, original or Substitute. The recitals in any conveyance made by the Trustee, original or Substitute, shall be accepted and construed in court and elsewhere as prima facie evidence and proof of the facts recited and no other proof shall be required as to the request by Beneficiary or the holder(s) of a majority of the Indebtedness to the Trustee to enforce this Trust, or as to the notice of or holding of the sale, or as to any particulars thereof, or as to the resignation of the Trustee, original or Substitute, or as to the inability, refusal or failure of the Trustee, original or Substitute, to act or as to the election of Beneficiary or the holder(s) of a majority of the Indebtedness to appoint a new Trustee, or as to appointment of a Substitute Trustee, and all prerequisites of the sale shall be presumed to have been performed; and each sale made under the powers herein granted shall be a perpetual bar against Grantor and the successors and assigns of Grantor.

V.

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF GRANTOR

For the purpose of better securing to Beneficiary the payment of the Indebtedness, Grantor represents, warrants and covenants to Beneficiary as follows:

A. Title, Authority, and Performance under Leases. At the time of the execution and delivery of this Deed of Trust, Grantor is the sole and lawful owner of the Land in fee simple, and Grantor has the authority to execute this Deed of Trust. The Property is free from all encumbrances and charges whatsoever except for the liens securing the Senior Note, the liens securing the HOME loan between Grantor and the Texas Department of Housing and Community Affairs ("**TDHCA**"), and the Permitted Encumbrances. No assignments or pledges are currently in effect with respect to any leases of or rentals

or income from the Property except for assignments and/or pledges to Beneficiary and those expressly stated in **EXHIBIT B** and those securing the Senior Note, and until the Indebtedness is fully paid, at which time this Deed of Trust will be released. Grantor shall not make any additional assignment or pledge thereof without Beneficiary's prior written consent.

B. Tax and Insurance Escrow. Unless Grantor is already required to maintain an escrow account with the Senior Lender upon written request by Beneficiary, Grantor agrees to deposit with Beneficiary on a monthly basis, or at other intervals as specified, a sum that shall be sufficient to pay taxes, assessments, charges, and insurance premiums as they become due, all as reasonably estimated by Beneficiary, which sum shall be held by Beneficiary (or by a banking institution selected by Beneficiary whose funds are insured by a federal agency or instrumentality) in trust to pay taxes, assessments, charges and premiums, but which shall not bear interest and may be commingled with other funds. If at any time the funds so held by (or on behalf of) Beneficiary are insufficient to pay any tax, assessment, charge or insurance premium, Grantor shall, upon receipt of notice, deposit with Beneficiary (or such banking institution), all additional funds as are necessary to remove the deficiency. If the Indebtedness is for any reason declared immediately due and payable, funds held by (or on behalf of) Beneficiary for payment of taxes, assessments, charges or premiums as herein provided may, at Beneficiary's election, be applied on the Indebtedness in any manner as Beneficiary so elects. In the event that Grantor is escrowing with Senior Lender (as defined below) a sum for payment of taxes, assessments, charges and insurance premiums and such amount is sufficient to fully discharge such taxes, assessments, charges and insurance premiums, Beneficiary agrees not to require an additional escrow deposit under this paragraph. In the event that Beneficiary does not require the escrow deposits described in the paragraph, Grantor shall provide Beneficiary with written evidence that (i) all applicable taxes and assessments have been paid at least thirty (30) days prior to delinquency and (ii) all insurance premiums have been paid thirty (30) days before the renewal date of the applicable policies. Grantor shall duly pay and discharge, or cause to be paid and discharged, all taxes, assessments, charges, and insurance premiums before they become past due.

C. Insurance. Grantor shall, prior to or concurrently with the execution of this Deed of Trust, deliver to Beneficiary all of the following insurance policies together with evidence of such other insurance coverage as required pursuant to the Loan Agreement, accompanied by paid premium receipts evidencing payment in full of the required premiums for at least the first full year of coverage:

- (i) fire insurance with extended coverage and standard Beneficiary and replacement cost endorsement for the full insurable value of the insurable portion of the Property, but in no event for an amount less than the amount of the Note (90% shall be acceptable co-insurance rates for fire insurance); and
- (ii) public liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for a twelve (12) month policy period. Each renewal policy shall be delivered to Beneficiary not less than thirty (30) days before the termination of the prior policy and with each policy there shall be delivered to Beneficiary a receipt showing payment of the premium therefor.

Upon request, Grantor shall also carry additional insurance or additional reasonable amounts of insurance covering Grantor or the Property as Beneficiary shall reasonably require, insuring against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in the region where the Property is located.

If the Property or any part thereof has been or at any time during the term of this Deed of Trust or any extension or renewal thereof is designated as a flood-prone or flood-risk area pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law, Grantor shall obtain flood insurance in such total amounts as Beneficiary may from time to time require and shall otherwise comply with the requirements of the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, or any successor law.

All insurance required under this Deed of Trust and the Loan Agreement shall be fully paid for, non-assessable, and such policies shall contain such provisions, endorsements, and expiration dates as Beneficiary shall reasonably require. Such policies shall be issued by insurance companies authorized and licensed to transact business in the State of Texas with ratings acceptable to Beneficiary in its sole and absolute discretion and shall name Beneficiary as an additional insured.

D. Operations. Grantor will abstain from and not permit the commission of waste in or about the Property, will (subsequent to construction completion) maintain the Property in good operating condition and repair at all times, ordinary wear and tear and insured casualty excepted, will not remove or demolish the buildings or other improvements now or hereafter constituting a part of the Property, or alter the design or structural character of any buildings or improvements unless Beneficiary shall first consent thereto in writing, which consent shall be granted or denied in Beneficiary's reasonable discretion, and will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property or the use thereof, which consent shall not be unreasonably withheld, delayed or conditioned. Grantor will not seek or acquiesce in a zoning reclassification of all or any portion of the Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Property, without Beneficiary's prior written consent. Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

E. Obligations Under Other Loan Documents. Grantor hereby agrees to comply with and perform all of its obligations under the other Loan Documents and agrees to be bound by the representations, warranties and covenants made by Grantor contained in the Loan Documents. All of representations, warranties and covenants contained in the other Loan Documents are hereby fully incorporated herein.

F. Casualty and Condemnation Proceeds. Subject to the terms of the Loan Agreement, the Senior Loan Documents (as defined in the City Loan Agreement), and the Intercreditor Agreement (as defined below), in the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, Grantor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Indebtedness in balance and rebuild the affected portion of the Property in a manner that provides adequate security to Beneficiary for repayment of the Indebtedness or if such proceeds are insufficient then Grantor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no Default then exists under the Loan Documents that will not be cured by rebuilding the affected portion of the Property. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Indebtedness in a manner that provides adequate security to Beneficiary for repayment of the remaining balance of the Indebtedness.

G. Failure to Pay. All taxes and any assessments that are due and payable affecting the Property shall be paid and discharged in full prior to execution and delivery of this Deed of Trust, or as they subsequently become due and payable and prior to delinquency. If Grantor fails to pay any tax, assessment, charge or insurance premium affecting the Property in accordance with the terms of this Deed of Trust, Beneficiary may, at its option, pay the same, or if Grantor fails to perform any of Grantor's covenants or agreements set forth in this Deed of Trust in accordance with the terms hereof, Beneficiary may, at its option, correct or cause to be corrected the same and pay any sums in connection therewith as Beneficiary shall determine to be necessary or advisable, and all taxes, assessments, charges, insurance premiums and sums paid by Beneficiary in connection with such matters (collectively, whether one or more, an "**Assessment**") shall be immediately repayable by Grantor to Beneficiary, together with interest on each amount at the default rate provided in the Note from the date the sum is paid by Beneficiary, until the same is refunded to Beneficiary and all such amounts and interest thereon, shall be secured hereby as part of the Indebtedness. Notwithstanding the foregoing, Grantor shall have the right to object and protest to ad valorem taxes on the Property in good faith and with due diligence provided that (i) no Default exists under

this Deed of Trust or any of the other Loan Documents, (ii) Grantor gives Beneficiary prior written notice of its intent to contest an Assessment; (iii) Grantor demonstrates to Beneficiary's reasonable satisfaction that (A) the Property will not be sold to satisfy the Assessment prior to the final determination of the legal proceedings, (B) Grantor has taken such actions as are required or permitted to accomplish a stay of any such sale, and (C) Grantor has either (1) furnished a bond or surety (satisfactory to Beneficiary in form and amount) sufficient to prevent a sale of the Property or (2) at Beneficiary's option, deposited one hundred fifty percent (150%) of the full amount necessary to pay any unpaid portion of any Assessment with Beneficiary; and (iv) such proceeding shall be permitted under any other instrument to which Grantor or the Property is subject (whether superior or inferior to this Deed of Trust).

H. Title Litigation. Subject to title insurance coverage, in case of any litigation involving the title to any part of the Property, or the validity of this Deed of Trust, Beneficiary may be represented in the litigation through attorneys of its own selection and Grantor shall, upon demand, promptly reimburse Beneficiary for all court costs and reasonable attorneys' fees incurred by Beneficiary in defending and/or protecting its rights in any litigation.

I. Default. Subject to applicable notice and cure provisions and the other terms of this Deed of Trust and the other Loan Documents, if a Default (as defined in the Loan Agreement) occurs, the whole of the Indebtedness, at the option of Beneficiary, shall become immediately due and payable, without further notice or demand.

J. Tenancy at Sufferance. Following any sale of the Property, or any part thereof, under the provisions of this Deed of Trust, and to the extent permissible under applicable law, Grantor shall be obligated to immediately vacate the premises and prior to such vacation shall be a tenant at sufferance of the purchaser of the Property sold and shall be subject to eviction in an action of forcible detainer; provided, the provisions of this Subparagraph J shall be subject to any agreements made in writing by Beneficiary with reference to any existing and/or future leases; provided, further, to the extent permitted under applicable law, the purchaser at any foreclosure sale shall have the option to affirm any then existing leases or tenancies or otherwise to succeed to the rights of Grantor thereunder.

K. Subrogation. To the extent that any of the Indebtedness represents funds utilized to satisfy any outstanding Indebtedness or obligations secured by liens, rights, or claims against the Property or any part thereof, Beneficiary shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any outstanding indebtedness or obligation so satisfied, however remote, regardless of whether the liens, rights, superior titles and equities are assigned to Beneficiary or released by the holder(s) thereof.

L. Homestead Disclaimer. Grantor represents and covenants that the Property forms no part of any property owned, used, or claimed by Grantor as a business or residential homestead, or as exempt from forced sale under the laws of the State of Texas and disclaims and renounces all and every such claim thereto.

M. Additional Transfers and Encumbrances. Beneficiary shall have the right to declare the Indebtedness secured hereby immediately due and payable in the event the Grantor sells, transfers, assigns, or conveys its interest, whether voluntarily or involuntarily, in the Property, or any part thereof, without the prior written consent of Beneficiary, such consent not to be unreasonably withheld, delayed or conditioned or in the event any junior or subordinate mortgage, lien, deed of trust, or other encumbrance is placed upon the Property without the prior written consent of Beneficiary, provided the foregoing shall not prohibit the removal of worn or obsolete Personalty that is replaced with new items of the same or similar quality. If Beneficiary consents to the sale, transfer, assignment, or conveyance of Grantor's interest in the Property, or any part thereof, and waives in writing its right to accelerate the Indebtedness secured hereby as provided in this Subparagraph M, Beneficiary may require that the transferee assume all the obligations of Grantor under this Deed of Trust, the Loan Agreement and the Note in a form reasonably acceptable to Beneficiary and its legal counsel. For purposes of this Subparagraph M, "transfer" of the Property includes any direct or indirect transfer of any beneficial ownership in Grantor (except as allowed by the City Loan Agreement) or the managing member or managing member of Grantor except to the extent that such

transfer is permitted under the Loan Agreement (including the incorporated provisions of the City Loan Agreement) after satisfaction of all requirements for such transfer including the consent of the City of Houston (the "City"), if required for such transfer.

Notwithstanding anything to the contrary contained in this Deed of Trust or the other Loan Documents, the removal and/or replacement of Grantor's managing member for cause in accordance with Grantor's partnership agreement shall not require the consent of the Beneficiary or the Trustee, shall not constitute a default or Default under this Deed of Trust or the Loan Documents or accelerate or give the Beneficiary the right to accelerate the maturity of the Loan. The consent of the Beneficiary and the City shall be required for the appointment of a new managing member, but if the Grantor's Tax Credit Investor (as defined in the Loan Agreement) exercises its right to remove the Grantor's managing member for cause, Beneficiary will not unreasonably withhold its consent to the substitute managing member; provided however, the consent of neither the Trustee nor the Beneficiary shall be required if the substitute managing member is an affiliate of such limited partner. The substitute managing member shall assume all of the rights and obligations of the removed managing member of Grantor hereunder.

N. No Reliance on Beneficiary. Grantor is experienced in the ownership and operation of properties similar to the Property, and Beneficiary is relying solely upon Grantor's expertise and business plan in connection with the construction of the Improvements and ownership and operation of the Property. Grantor is not relying on Beneficiary's expertise or business acumen in connection with the Property or in connection with the construction of the Improvements.

O. No Litigation. Except as disclosed in writing to Beneficiary, there are no (i) actions, suits, or proceedings, at law or in equity, before any Governmental Authority (as defined in the Loan Agreement) or arbitrator pending or, to the best of Grantor's knowledge, threatened against or affecting Grantor, any guarantor, or involving the Property, (ii) outstanding or unpaid judgments against the Grantor or the Property, or (iii) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

P. Payment for Labor and Materials. Grantor will timely pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Property (which shall be deemed an Assessment on the Property) and never permit to exist in respect of the Property or any part thereof any unbonded lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Encumbrances and the liens securing the Senior Note. In the event that Grantor becomes aware that such lien has been recorded against the Property, Grantor shall have such lien released within thirty (30) days. If Grantor fails to pay or bond around any bills for labor, materials, and specifically fabricated materials incurred in connection with the Property, Beneficiary shall have the rights set forth in Section V.G for Grantor's failure to pay any Assessment, as well as the other rights and remedies provided under this Deed of Trust.

Q. Tax on Deed of Trust. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Grantor will pay when due all such taxes, provided that if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Grantor to pay such taxes, then Grantor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Beneficiary.

R. ERISA. If and to the extent that Grantor is obligated under any plan governed by or subject to the Employee Retirement Income Security Act, as amended ("**ERISA**"), Grantor shall fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA and the Internal Revenue Code, as amended ("**IRC**"). Furthermore, Grantor shall comply in all material respects with any and all applicable provisions of ERISA and the IRC and will not incur or permit to exist any unfunded liabilities to the Pension Benefit Guaranty Corporation or to such plan under ERISA or the IRC.

S. Disclosures. If at any time Grantor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which are likely to have a material adverse effect on the Property or Grantor's financial condition, Grantor shall promptly notify Beneficiary of the existence or occurrence thereof and of Grantor's opinion as to what effect such may have on the Property or Grantor. Grantor shall also give prompt notice to Beneficiary of (i) the serious illness or death of any principal or key employee of Grantor, (ii) any litigation or dispute, threatened or pending against or affecting Grantor, the Property or any guarantor which could have a material adverse effect on the Property or the financial condition or business of any of the aforementioned parties, (iii) any Default, (iv) any default by Grantor or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party, and (v) any change in the character of Grantor's business as it existed on the date hereof.

VI.

CAPTIONS

The captions contained in this Deed of Trust are for convenience only and shall not be taken into account in determining the meaning of any provision of this Deed of Trust.

VII.

ASSIGNMENT OF LEASES

As further security for the payment of the Indebtedness, and subject to the rights of senior lienholders, including, without limitation, the Senior Lender, Grantor hereby assigns to Beneficiary, its successors and assigns, all leases, whether now in existence or hereafter created, covering all or any portion of the Property together with all rents to become due under each such lease, subject, however, to any prior assignment in connection with senior indebtedness. For so long as no Default exists, Grantor may collect the rents, but not more than one (1) month in advance, in the ordinary course of business, unless otherwise provided by the express terms of the leases and approved by Beneficiary. In the event of any Default and at any and all times during the continuance thereof, in addition to all other rights and remedies of Beneficiary, Beneficiary shall have the exclusive right and power (but not the obligation) to enter upon and take possession of the Property or any part thereof, to rent or re-rent the same, either in the name of Beneficiary or Grantor, to receive all rents, revenues, profits, or other income from the Property and to apply all amounts received first, to the costs and expenses incurred by Beneficiary in protecting and operating the Property and next, to the payment of the Indebtedness in any manner and in any order of priority as Beneficiary shall determine. This action by Beneficiary shall not operate as a waiver of the Default, or as an affirmation of any lease or of the rights of any tenant of title to that part of the Property covered by the lease or held by the tenant, should the Property, or any part thereof, be acquired by Beneficiary or other purchaser at a foreclosure sale. The right of Beneficiary to receive all rents, revenues, profits, or other income from the Property during the continuance of any Default shall be applicable whether Beneficiary has entered upon or taken possession of the Property, or has otherwise attempted to exercise its rights hereunder and if any rents, revenues, profits, or other income are paid to or received by Grantor, Grantor shall immediately pay the same to Beneficiary, without the necessity of any request or demand therefor. Grantor agrees at any time and from time to time until the indebtedness is paid in full to execute and to deliver any additional assignments of leases and/or rents, security agreements and other instruments as Beneficiary shall from time to time reasonably require. The substance, form, execution and delivery of additional assignments of leases and/or rents, security agreements and other instruments shall be reasonably satisfactory to Beneficiary.

VIII.

PERSONALTY

This Deed of Trust covers and includes, without limitation, Grantor's interest in the Personalty hereinabove described.

IX.

USE OF PERSONALTY

Grantor represents that all Personalty is property for business use and is not consumer goods. Grantor further covenants that there are and shall be no conditional sales contracts that cover any of the Personalty.

X.

SECURITY INTEREST IN PERSONALTY

Without limiting any of the provisions of this instrument, Grantor, as referred to in this paragraph as "**Debtor**," expressly does the following:

A. Grant. Debtor hereby grants unto Beneficiary and its successors and assigns, described herein as Secured Party, and referred to in this paragraph as "**Secured Party**", a security interest in Debtor's interest in the Personalty (subject to the Permitted Encumbrances and the security interests and rights granted to Senior Lender).

B. UCC Remedies. Debtor agrees, in addition to any other remedies granted in this instrument to Secured Party or the Trustee, that Secured Party may, during the existence of any Default, proceed under Chapter 9 of the Texas Uniform Commercial Code (the "**UCC**") as to all or any part of the Personalty and shall have and may exercise with respect to the Personalty all the rights, remedies and powers of a Secured Party under the UCC, including, without limitation, the right and power to sell at public or private sale or sales, or otherwise to dispose of, to lease, or to utilize the Personalty and any part or parts thereof, in any manner authorized or permitted under the UCC after default by a debtor and to apply the proceeds thereof toward payment of any costs, expenses and attorneys' fees and legal expenses thereby incurred by Secured Party and toward the payment of Debtor's obligations, including the Note and all other Indebtedness described in this instrument in any order or manner as Secured Party may elect. Among the rights of Secured Party during the existence of a Default, and without limitation, Secured Party shall have the right to take possession of the Personalty and to enter upon any premises where same may be situated for this purpose without being deemed guilty of trespass and without liability for damages thereby occasioned and to take any action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the Personalty for sale, lease, or other use or disposition as herein authorized. Debtor agrees that if any notice of sale required under the UCC is mailed, postage prepaid, to Debtor at the address shown herein at least ten (10) days before the time of the sale or disposition, the notice shall be deemed reasonable and shall fully satisfy any requirement for giving of the notice.

If a Default exists, and to the extent it may lawfully do so and without limiting any rights and/or privileges herein granted to Secured Party, Debtor agrees that Secured Party and/or the above Trustee and any Substitute Trustee, may dispose of any or all of the Personalty at the same time and place and after giving the same notice provided for in this Deed of Trust in connection with a nonjudicial foreclosure sale under the terms and conditions set forth in this Deed of Trust. In this connection, Debtor agrees that the sale may be conducted by the Trustee or the Substitute Trustee; that the sale of the Land and Improvements described in this Deed of Trust and the Personalty or any part thereof, may be sold separately and/or together; and that if the Land and Improvements described herein and the Personalty or any part thereof, are sold together, the Secured Party will not be obligated to allocate the consideration received as between the Land and Improvements and the Personalty.

C. Possession. Debtor hereby grants to Secured Party the right, at its option upon a Default to transfer at any time to itself or to its nominee the Personalty, or any part thereof and to receive the monies, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for Debtor's obligations or to apply it on the principal and interest or other amounts owing on any of Debtor's

obligations, whether or not then due, in any order or manner as Secured Party may elect. All rights with respect to marshalling of assets of Debtor, including with respect to the Personalty, or to a sale in inverse order of alienation, are hereby waived.

D. Authority. Debtor hereby covenants, stipulates and agrees that all recitals in any instrument of assignment or any other instrument executed by Secured Party incident to the sale, transfer, assignment, lease or other disposition or utilization of the Personalty or any part thereof hereunder shall be prima facie evidence of the matters stated therein and all prerequisites of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto shall be rebuttably presumed to have been performed or to have occurred.

E. Assembly and Expenses. Debtor hereby covenants and agrees that Secured Party, during a Default, may require Debtor to assemble the Personalty and to make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease, or other use or disposition, selling, leasing or otherwise using or disposing of the Personalty and the like that are incurred or paid by Secured Party as authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to the Indebtedness and Debtor shall be liable therefor.

F. Financing Statement. A carbon, photographic, or other reproduction of this Deed of Trust may be filed as a Financing Statement under the UCC between Debtor and Secured Party whose addresses are set forth below. Except for the security interest granted hereby in the Personalty, the security interests and rights in the Personalty granted to Senior Lender, the security interest granted to the Subordinate Lender or otherwise expressly stated in **EXHIBIT B** hereto, Debtor is owner and holder of the Personalty free of any adverse claim, security interest or encumbrance, and Debtor will defend the Personalty against all claims and demands of any person at any time claiming the same or any interest therein. Debtor has not heretofore signed any financing statement and no financing statement signed by Debtor is now on file in any public office except those statements, true and correct copies of which have been delivered to the Secured Party or in connection with the Senior Note (as defined below). So long as any amount remains unpaid on any Indebtedness described in this Deed of Trust, Debtor will not execute and there will not be filed in any public office any financing statement or statements affecting the Personalty other than financing statements in favor of the Senior Lender or Secured Party hereunder, unless the prior written specific consent and approval of Secured Party shall have first been obtained. Debtor authorizes Secured Party to file, in jurisdiction where this authorization will be given effect, a financing statement signed only by Secured Party covering the Personalty and at the request of Secured Party, Debtor will join Secured Party in executing one or more financing statements, pursuant to the UCC in form satisfactory to Secured Party and will pay the cost of filing the same or filing or recording this instrument as a financing statement, in all public offices at any time and from time to time whenever filing or recording of any financing statement or of this instrument is deemed by Secured Party to be necessary or desirable.

XI.

ADDRESSES

The addresses of Grantor and Beneficiary, are as follows:

Grantor: Houston DMA Housing II, LLC
404101 Parkstone Heights Drive, Suite 310
Austin, TX 78746
Attention: Janine Sisak, SVP / General Counsel

With a copy to: RBC Community Investments, LLC
600 Superior Avenue
Suite 2300
Cleveland, OH 44114
Attention: General Counsel

With a copy to: Coats Rose, P.C.
2700 Via Fortuna, Terrace 2, Suite 350
Austin, TX 78746
Attention: Scott A. Marks

Beneficiary: City of Houston
c/o Housing and Community Development Department
2100 Travis, 9th floor
Houston, TX 77002
Attention: Director

With a copy to: City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Disaster Recovery

With a copy to: Housing and Community Development Department
2100 Travis, 9th floor
Houston, TX 77002
Attention: Asia Speights
E-mail:Asia.Speights@houstontx.gov

Trustee: The City of Houston
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

Each party shall have the right to designate from time to time another address within the continental United States for purposes of this Deed of Trust by written notice to the other party. Notwithstanding the foregoing agreement to provide courtesy copies, such copies shall be a courtesy only and failure to provide such copies shall have no effect on the validity of a notice properly given to Grantor.

Notices under this Deed of Trust shall be effective in the case of utilization of the U.S. Mail Service, upon the earlier of (i) three days after deposit of such notice in the mail, return receipt requested or (ii) delivery. Notices sent by overnight courier services shall be effective one day after deposit with such service. All other notices shall be effective upon delivery. Notwithstanding the foregoing, any foreclosure notices shall be effective upon deposit with the U.S. Mail Service.

XII.

RESTRICTIVE COVENANTS

Grantor has executed and filed of record or will execute and file of record a certain Restrictive Covenants dated of even date hereof (the "**Restrictive Covenants**") covering the Property. The Restrictive Covenants shall remain in full force and effect until expiration or termination in accordance with the provisions thereof and no invalidity, release or termination of this Deed of Trust shall operate to invalidate, release or terminate the Restrictive Covenants. The Restrictive Covenants shall not be deemed a "Loan Document" as such term is used herein or in any of the other Loan Documents.

XIII.

ENVIRONMENTAL MATTERS

A. Compliance with Laws. Grantor hereby represents, warrants, covenants and agrees to and with Beneficiary that:

- (i) Grantor will not and will not permit any tenant or occupant of the Property to, generate, store, handle or otherwise deal with hazardous or toxic substances in, on, about or under the Property; and
- (ii) Grantor has not at any time engaged in or permitted, nor, to the best of Grantor's knowledge after reasonable and prudent inquiry, which has consisted of the Phase I report previously delivered to Beneficiary, has any current or former tenant, occupant or owner of the Property, or any portion thereof, engaged in or permitted any generation, storage, handling, dumping, discharge, disposal, spillage or leakage of any hazardous or toxic substances, at, on, or about the Property, or any portion thereof, except as disclosed on the Phase I report previously delivered to Beneficiary.

Notwithstanding the foregoing, Grantor shall be permitted to have such chemicals, materials and supplies on the Property which are normally used in connection with the prudent operation, use, maintenance and ownership of a multi-family unit apartment complex and which are used in compliance with environmental laws.

B. Indemnification. **GRANTOR HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND (WITH COUNSEL REASONABLY APPROVED BY BENEFICIARY) AND TO HOLD BENEFICIARY, ITS AGENTS, MEMBERS, OFFICERS, REPRESENTATIVES AND ITS EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, ADMINISTRATIVE PROCEEDINGS, JUDGMENTS, DAMAGES, PUNITIVE DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES (INCLUDING SUMS PAID IN SETTLEMENT OF CLAIMS), INTEREST OR LOSSES, INCLUDING REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND EXPENSES, OF ANY KIND OR NATURE (COLLECTIVELY, THE "COSTS") THAT ARISE DIRECTLY OR INDIRECTLY, FROM OR IN CONNECTION WITH THE PRESENCE, SUSPECTED PRESENCE, RELEASE OR SUSPECTED RELEASE (A "RELEASE") OF ANY HAZARDOUS OR TOXIC SUBSTANCE, FROM, ON, ABOUT, UNDER OR WITHIN THE PROPERTY, OR ANY PORTION THEREOF WHICH OCCURS DURING OR PRIOR TO SUCH TIME AS GRANTOR OWNS THE PROPERTY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, GRANTOR'S LIABILITY HEREUNDER, SUBJECT TO THE DE MINIMIS PROVISIONS OF ARTICLE XIII(A)(ii) ABOVE, SHALL NOT INCLUDE ANY LOSS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF BENEFICIARY OR RELEASE OF HAZARDOUS OR TOXIC SUBSTANCES BY BENEFICIARY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF BENEFICIARY AFTER BENEFICIARY HAS TAKEN POSSESSION OF THE PROPERTY.**

C. Remediation. If any investigation or monitoring of site conditions, or any cleanup, containment, restoration, removal or other Remedial Work (collectively, the "**Remedial Work**") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreements affecting the Property because of, or in connection with any release of hazardous or toxic substances, Grantor shall perform, or cause to be performed, the Remedial Work in compliance with such law, regulation, order or agreement. All Remedial Work shall be performed by one or more contractors selected by Grantor and approved in advance, in writing, by Beneficiary and under the supervision of a consulting engineer selected by Grantor and approved in advance, in writing, by Beneficiary. All costs of any Remedial Work shall be paid by Grantor, including, without limitation, the reasonable charges of contractor(s) and/or the consulting engineer and Beneficiary's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of any Remedial Work. If Grantor shall fail to timely commence or cause to be timely commenced, or fail to diligently prosecute to completion, any Remedial Work, then Beneficiary may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be "**Costs**" within the meaning of Subparagraph B above. All costs shall be due and payable

upon demand therefor by Beneficiary, together with interest thereon at the Default Rate provided in the Note from the date such costs are paid by Beneficiary, until the same are refunded to Beneficiary and all such costs and the interest thereon shall be secured hereby.

D. Survival. Notwithstanding anything to the contrary contained herein, or in the Note or Loan Agreement, the obligations of Grantor under this Paragraph XIII shall survive any assumption of the Indebtedness by a successor to Grantor (whether or not the assumption has been approved or disapproved, or whether or not Grantor was released from liability on the Indebtedness), foreclosure of this Deed of Trust (or transfer of the Property in lieu of foreclosure) and release or termination of this Deed of Trust.

XIV.

MISCELLANEOUS

A. No Waiver. No delay by Beneficiary in exercising any right, option or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Default.

B. Cumulative Remedy. All rights and remedies of Beneficiary under this Deed of Trust and any and all other instruments evidencing or securing the Indebtedness, are cumulative and concurrent and may be exercised singularly, successively, or concurrently.

C. No Release. The granting to Grantor or to any other person or party of any extension(s) of time for payment of all or any part of the Indebtedness or the performance of any covenant or agreement contained herein, or the taking of other or additional security for the payment of the whole or any part of the Indebtedness, or the releasing of any part of the security at any time held in connection with the Indebtedness, shall not in any way release Grantor or any other person or party obligated for the payment of the Indebtedness, or release or impair this Deed of Trust or any other security held in connection with the Indebtedness, except to the extent of the person, party or property expressly released in writing by Beneficiary.

D. Severability. If any provision in this Deed of Trust is invalid or unenforceable in whole or in part, this instrument shall in all other respects remain in full force and effect.

E. Successors and Assigns. All of the provisions hereof shall apply to, inure to the benefit of, and be binding upon Beneficiary and Grantor and their respective successors and assigns (provided the foregoing shall not be construed as consent to any transfer by Grantor of the Property that is not permitted under the Loan Documents).

F. Further Assurances and Corrections. From time to time, at the request of Beneficiary, Grantor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's reasonable opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Beneficiary to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all costs connected with any of the foregoing.

G. Choice of Law. This Deed of Trust shall be performable and enforced in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas from time to time in effect except to the extent preempted by the United States federal law. Venue shall be appropriate in Harris County, as applicable.

H. Usury. In no event shall any provision of this Deed of Trust, the Note, the Loan Agreement or any other instrument evidencing or securing the Indebtedness ever obligate Grantor to pay interest on the Note secured hereby at a rate greater than that permitted by law, or obligate Grantor to pay any taxes, assessments, charges, insurance premiums, or other amounts to the extent that the payments constitute interest under applicable law and when added to the interest payable on the Note secured hereby, would be held to constitute the payment by Grantor of interest at a rate greater than that permitted by law; and this provision shall control over any provision to the contrary.

It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Note or the Indebtedness or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law ("Highest Lawful Rate"). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or the Indebtedness, or (iii) Grantor will have paid or Beneficiary will have received by reason of any voluntary prepayment by Grantor of the Note and/or the Indebtedness, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Highest Lawful Rate shall be automatically cancelled, ab initio, and all amounts in excess of the Highest Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Note and/or the Indebtedness (or, if the Note and all Indebtedness have been or would thereby be paid in full, refunded to Grantor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor, or crediting such excess interest against the Note and/or the Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged or received by Beneficiary for the use, forbearance or detention of any debt evidenced by the Note and/or the Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Indebtedness does not exceed the Highest Lawful Rate from time to time in effect and applicable to the Note and/or the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

I. Covenants Run with the Land. All obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Property until the lien of this Deed of Trust has been fully released by Beneficiary.

J. **JURY WAIVER. GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF**

THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE, THE INDEBTEDNESS OR THIS DEED OF TRUST.

K. Entire Agreement. THIS DEED OF TRUST, TOGETHER WITH THE NOTE AND LOAN AGREEMENT, THE OTHER LOAN DOCUMENTS, AND THE RESTRICTIVE COVENANTS CONSTITUTE A WRITTEN LOAN AGREEMENT AS DEFINED IN SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE. THIS WRITTEN LOAN AGREEMENT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

L. Subordination. It is the intent of Beneficiary and Grantor that the indebtedness evidenced by the Note shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by (i) a Promissory Note in the maximum principal amount of up to SIXTEEN MILLION AND NO/100 DOLLARS (\$16,000,000.00) (the "Senior Construction Note") to be issued by Grantor and payable to Capital One, a national banking association ("Construction Senior Lender"), or order, to the extent and in the manner provided in a certain Intercreditor Agreement to be entered into between Beneficiary, Grantor, the City of Houston and Construction Senior Lender (the "Intercreditor Agreement"), and (ii) a Multifamily Note in the maximum principal amount of up to SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,500,000.00) (the "Senior Permanent Note") to be issued on the Conversion Date (as defined in the Loan Agreement between Grantor and Beneficiary) by Grantor and payable to Capital One, National Association, and its successors and/or assigns, including the Federal Home Loan Mortgage Corporation (Freddie Mac) ("Permanent Senior Lender"), or order, to the extent and in the manner provided in a certain Subordination Agreement to be entered into between Beneficiary and Permanent Senior Lender on the Conversion Date (the "Subordination Agreement"). This Deed of Trust and all of the other Loan Documents, excepting those certain restrictive covenants between Grantor and Beneficiary of even date herewith, are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the deeds of trust securing the Senior Construction Note and the Senior Permanent Note (collectively, "Senior Deed of Trust") as more fully set forth in the Intercreditor Agreement and the Subordination Agreement. The rights and remedies of the Beneficiary and each subsequent holder of this Note and the Deed of Trust are subject to the restrictions and limitations set forth in the Intercreditor Agreement and the Subordination Agreement, respectively. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Beneficiary under the Intercreditor Agreement and the Subordination Agreement.

M. Extended Low Income Housing Commitment. The liens securing the City Loan and evidenced by this Deed of Trust shall be subordinate to any extended low income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code)(the "Extended Use Agreement") recorded against the Land; provided that such Extended Use Agreement, by terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Land by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The City's Restrictive Covenants shall not be subordinate to any extended low income housing commitment as such term is defined in the Extended Use Agreement.

[Signatures on following page]

Signature Page
Deed of Trust, Security Agreement and Financing Statement

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, Security Agreement and Financing Statement on the date set forth in the acknowledgments below but to be effective as of _____, 20__.

GRANTOR:

**Houston DMA Housing II, LLC,
a Texas limited liability company**

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

ATTACHMENTS:

EXHIBIT "A" Land
EXHIBIT "B" Permitted Encumbrances

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 20__, by Diana McIver, the Manager of DMA Ella Grand, LLC, a Texas limited liability company, the managing member of Houston DMA Housing II, LLC, a Texas limited liability company, on behalf of such limited liability company.

NOTARY PUBLIC, State of Texas

PRINTED NAME OF NOTARY
My COMMISSION EXPIRES: _____

**EXHIBIT A
PROPERTY DESCRIPTION**

*THE LEGAL DESCRIPTION WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.

Exhibit A

CDBG-DR17 (Indirect Loan)
ATTACHMENT C

**EXHIBIT B
PERMITTED ENCUMBRANCES**

*THE PERMITTED ENCUMBRANCES WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.

Exhibit B

CDBG-DR17 (Indirect Loan)
ATTACHMENT C

Attachment D

Financing Statements

Attachment E

RESERVED

Attachment F

RESERVED

**ATTACHMENT G
TO LOAN AGREEMENT**

Construction Completion Guaranty

CONSTRUCTION COMPLETION GUARANTY

This Construction Completion Guaranty ("**Guaranty**") is made by the undersigned, **DMA Development Company, LLC** (whether one or more, collectively, jointly and severally, hereinafter referred to as "**Guarantor**"), in favor of **THE CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas ("**City**"), and is a guarantee of certain obligations of **Houston DMA Housing II, LLC**, a Texas limited liability company ("**Borrower**").

RECITALS:

WHEREAS, Borrower has requested that the City enter into a certain Loan Agreement ("**Agreement**") of substantially even date herewith, by and between Borrower and the City, pursuant to which the City is being requested to lend to Borrower an amount not to exceed TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00) ("**Loan**") to pay for eligible costs in connection with the new construction of a 145-unit family senior affordable housing development (collectively, the "**Improvements**") upon certain real property owned by Borrower and located in Harris County, Texas ("**Premises**") (the Premises and the Improvements are hereinafter referred collectively to from time to time as, the "**Project**");

WHEREAS, Borrower's obligations to the City are evidenced by a certain Note executed by Borrower ("**Note**") of even date herewith and are secured by a Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") covering the Project, certain other security documents, and all of the documents evidencing, securing, guaranteeing or governing the Loan, are sometimes referred to collectively as the "**Loan Documents**"; and

WHEREAS, the City is unwilling to enter into the Agreement and to make the Loan unless Guarantor delivers this Guaranty to the City.

NOW, THEREFORE, in consideration of the foregoing and in order to induce the City to enter into the Agreement and to make the Loan to Borrower subject to the terms and conditions of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and further acknowledging that the City intends to rely on the guaranty of Guarantor hereunder, Guarantor hereby agrees as follows:

1. **DEFINITIONS AND INTERPRETATIONS**. As used herein, the following capitalized terms shall have the following meanings:

"**Borrower**" shall mean Borrower and its successors and assigns.

"**Completion Date**" shall mean the date on which the Director sends written notice to Borrower that the Project Completion (as defined in the Agreement) has occurred in accordance with the Loan Documents and to the satisfaction of the Director and that the Guaranteed Obligations have been satisfied in full.

"**Guarantor**" shall mean and refer to each and all of the undersigned parties signing this Guaranty as Guarantor; and the liability of said parties for the performance of the covenants, duties and obligations of Guarantor hereunder shall be joint and several.

Capitalized words and phrases that are used herein and not defined herein shall have the meaning ascribed to them in the Loan Documents. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any of the members of the relevant class. Any defined term used herein that is a document, instrument, drawing, survey, map, plan, technical description or other writing, and any other reference herein to a writing, shall include the original of such writing and any and all amendments, supplements, modifications, renewals, extensions, restatements, reinstatements, rearrangements, enlargements, or replacements of or to the same from time to time.

2. **OBLIGATIONS GUARANTEED**. In consideration of the City entering into the Agreement and agreeing to make the Loan, and upon the terms and provisions hereof, Guarantor hereby irrevocably, jointly and severally, absolutely and unconditionally warrants and guarantees to the City the payment and

performance of the following (the "**Guaranteed Obligations**"), when due, whether by their terms, by acceleration, or otherwise: (a) that Borrower shall cause construction of the Project to be completed on or before the Completion Date, which shall be no later than the earlier of (i) twenty-four (24) months after the Closing of the Loan (as defined in the Agreement) or (ii) the expiration date of the GLO Contract (as defined in the Agreement), with time being of the essence for both deadlines; (b) that Borrower shall cause the Project to be constructed and completed in accordance with the Loan Documents and all requirements of any governmental authority without deviation unless approved by the City, in writing, or specifically permitted by applicable provisions of the Agreement; (c) that Borrower shall cause the Project to be constructed and completed free and clear of all liens other than those in favor of the Borrower (as may be collaterally assigned to City), Senior Lender, or as otherwise specifically permitted under the terms of the Deed of Trust; (d) that Borrower shall strictly comply with the environmental covenants, representations and warranties contained in the Deed of Trust and (e) that Borrower shall cause all costs of constructing the Project, including, but not limited to, all debt service and all operating deficits, to be paid when due, including without limitation, all costs in excess of those set forth in the Preliminary Project Budget (as defined in the Agreement) whether resulting from: (i) change orders; (ii) delays in obtaining any approvals from any governmental authority that are required for the construction, use, or occupancy of the Project (collectively, the "**Approvals**"); or (iii) otherwise. Guarantor further guarantees the payment and performance of the Guaranteed Obligations whether or not the same arise during or after the time that Borrower is the owner of the Premises, whether subsequent owners of the Premises acquire the Premises by voluntary or involuntary means, by foreclosure or deed in lieu of foreclosure, or otherwise and notwithstanding that other persons or entities may be the subsequent owners of the Premises.

3. **CONSIDERATION.** Guarantor acknowledges that Guarantor has made this Guaranty to induce the City to make advances to Borrower of the Loan and that the City is making such advances to Borrower in reliance upon this Guaranty and would not make such advances without the appropriate execution and delivery of this Guaranty.

Guarantor represents and warrants to the City that Guarantor has a financial interest in Borrower and will receive substantial economic benefit by reason of the City extending the Loan to Borrower, provided, however, that Guarantor's liability hereunder shall not be affected or impaired by such Guarantor's disposition or loss of its financial interest in Borrower or by reason of the City's refusal in accordance with the terms of the Loan Documents to make Loan advances to Borrower.

4. **OBLIGATIONS OF GUARANTOR UPON DEFAULT.** If a Default exists that is a failure by any party to pay or to perform any part of the Guaranteed Obligations when due, Guarantor shall, within ten (10) business days] after written demand of the City to Guarantor (a) cure such failure to pay and/or commence to perform diligently, continuously and in good faith the applicable part of the Guaranteed Obligations and complete same in the time frames required under the Loan Documents; (b) diligently procure completion of the Project at Guarantor's sole cost and expense and in the time frames required under the Loan Documents; (c) fully pay and discharge all claims, including for labor performed and material and services furnished in connection with the construction of the Project, subject to the provisions of the Loan Documents, including the right thereunder to contest such claims; and (d) pay the City (x) all reasonable attorneys' fees and other costs the City incurs in enforcing the performance or the payment of the Guaranteed Obligations, with interest at the Default Rate (as defined in the Note), and/or (y) any and all sums the City has advanced to satisfy portions of the Guaranteed Obligations pursuant to the Agreement. The City agrees that: (i) in the event that and so long as Guarantor is not in default of the terms, conditions, provisions, and obligations hereunder beyond applicable grace periods; (ii) in the event that and so long as Guarantor is timely paying or performing the Guaranteed Obligations as required herein based on the written request of the City and without the requirement of any legal proceeding to enforce the same; and (iii) after Guarantor commences and diligently and continuously continues, in good faith, to pay or perform a portion of the Guaranteed Obligations after written request of the City and Guarantor has provided the City with evidence satisfactory to the City that such Guaranteed Obligations are being timely performed, lien-free (or bonded around) and in strict accordance with the Loan Documents, there is no further Default by Borrower under the Agreement or the other Loan Documents or failure by Guarantor in payment or performance of the Guaranteed Obligations hereunder, the City shall continue to advance any Loan funds then available pursuant to the provisions of the Agreement as if no Default had occurred and shall not institute foreclosure proceedings under the Deed of Trust or charge interest at the rate under the

Note during the period after which Guarantor first pays or performs a portion of the Guaranteed Obligations (which portion is sufficient to the City to evidence that the Guaranteed Obligations will be timely completed in strict accordance with the Loan Documents) after written request of the City and prior to the date that one of the conditions described in items (i), (ii), and (iii) is no longer met. It is expressly understood and agreed that the City may institute such foreclosure proceedings and/or charge interest at the Default Rate under the Note, notwithstanding Guarantor's compliance and timely performance hereunder, should any Default exist that is not cured promptly after: (a) receipt by Guarantor of notice thereof, or (b) a demand by the City to Guarantor pursuant to this Section 4. **ANYTHING IN THIS GUARANTY TO THE CONTRARY NOTWITHSTANDING, GUARANTOR FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) THAT THE CITY MAY SUFFER OR INCUR BY REASON OF THE BREACH OR FAILURE OF GUARANTOR'S UNDERTAKINGS AND AGREEMENTS PURSUANT TO THIS GUARANTY.**

5. **TERMINATION.** The obligations of Guarantor hereunder shall terminate on the Completion Date as defined herein.

6. **CONTINUING GUARANTY.** This is a continuing Guaranty, and shall apply to and cover all of the Guaranteed Obligations and all renewals and extensions thereof until the termination date of Guarantor's obligations hereunder as established pursuant to Section 5 hereof.

7. **INDEPENDENT OBLIGATION; BANKRUPTCY OF BORROWER.** The obligations of Guarantor hereunder are independent of the obligations of Borrower or any other person; and the City may enforce any of the City's rights hereunder independently of any other right or remedy that the City may at any time hold with respect to the Guaranteed Obligations or any security or other guaranty therefor. Without limiting the generality of the foregoing, the City may bring a separate action against Guarantor without first proceeding against Borrower, any other guarantor or any other person, or any security held by the City, and regardless of whether Borrower or any other guarantor or any other Person is joined in any such action. The City's rights hereunder shall not be exhausted by any action taken by the City until all Guaranteed Obligations have been fully paid and performed or until the obligations of Guarantor hereunder terminate pursuant to Section 5 hereof.

The liability of Guarantor hereunder shall be reinstated and revived, and the rights of the City shall continue, with respect to any amount at any time paid on account of the Guaranteed Obligations that shall thereafter be required to be restored or returned by the City upon the bankruptcy, insolvency, or reorganization of Borrower, any other guarantor or any other person liable for the Guaranteed Obligations, or otherwise, all as though such amount had not been paid. In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor and shall assign to the City all rights of Guarantor thereunder. If Guarantor does not file any such claim, the City, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in the City's sole discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of the City's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. The City or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the City the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to the City all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that the City receives cash by reason of any such payment or distribution. If the City receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Loan Documents.

8. **WAIVER.** Guarantor hereby waives: (a) any defense based upon any legal disability or other defense of Borrower, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Borrower from any cause other than full payment and performance of those obligations of Borrower which are guaranteed hereunder; (b) any defense based upon any lack of authority of the officers, directors, partners, managers, members or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (c) any defense based upon the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to the City or intended or understood by the City or Guarantor; (d) any and all rights and defenses arising out of an election of remedies by the City, even though that election of remedies has destroyed Guarantor's rights of subrogation or reimbursement against the principal; (e) any defense based upon the City's failure to disclose to Guarantor any information concerning Borrower's financial condition or any other circumstances bearing on Borrower's ability to pay and perform its obligations under the Note or any of the other Loan Documents or upon the failure of any other principals of Borrower to guaranty the Loan; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (g) any defense based upon the City's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (h) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (i) any right of subrogation, any right to enforce any remedy which the City may have against Borrower and any right to participate in, or benefit from, any security for the Note or the other Loan Documents now or hereafter held by the City; (j) presentment, demand, protest and notice of any kind including notice of acceptance of this Guaranty; (k) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof; (l) any right to require the City to institute suit or exhaust remedies against Borrower or others liable for any of such indebtedness, to enforce the City's rights against any collateral which shall have been given to secure the Loan, to enforce the City's rights against any other guarantors of such indebtedness, to join Borrower or any others liable on such indebtedness in any action seeking to enforce this Guaranty, to resort to any other means of obtaining payment of such indebtedness; (m) notices of disbursement of Loan proceeds, acceptance hereof, proof of non-payment, default under any Loan Document, notices and demands of any kind (it being Guarantor's and the City's intent that Guarantor shall not be considered a "debtor" in accordance with Section 9.102 of the Texas Business and Commerce Code, as now existing or hereafter amended); (n) the invalidity, illegality or unenforceability of all or any portion of the indebtedness guaranteed hereby or any of the Loan Documents for any reason whatsoever, including that interest on such indebtedness violates applicable usury laws, that Borrower or others liable for all or a portion thereof have valid defenses, claims or offsets to all or a portion of such indebtedness, or that the Note or other Loan Documents have been forged or otherwise are irregular or not genuine or authentic (it being agreed that Guarantor shall remain liable under this Guaranty regardless of whether Borrower or any other person shall be found not liable for repayment of all or a portion of such indebtedness); (o) notice of any advances made or credit extended to Borrower on the faith of this Guaranty and of the execution and delivery by Borrower of any documents evidencing, securing, or pertaining to the Guaranteed Obligations; (p) notice of, and the right to consent to, the City's assignment of the benefits of this Guaranty; and (q) any and all benefits that might otherwise be available to Guarantor under applicable law. Guarantor further waives any and all rights and defenses that Guarantor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) the City may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if the City forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the City may collect from Guarantor even if the City, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's debt is secured by real property. These rights and defenses being waived by Guarantor include, but are not limited to, any rights or defenses based upon deficiency limitation, anti-deficiency, redemption or other similar rights. Without limiting the generality of the foregoing or any other provision hereof, Guarantor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation, any rights of subrogation, reimbursement, indemnification and contribution, and which might otherwise be available to Guarantor under Texas Property Code §§ 51.003, 51.004 and 51.005 or otherwise.

In addition, Guarantor agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder. Finally, Guarantor waives any rights and defenses it may have under Section 17.001 of the Texas Civil Practice & Remedies Code, Rule 31 of the Texas Rules of Civil Procedure, and Article 9 of the Texas Uniform Commerce Code.

9. **GUARANTY UNIMPAIRED BY SUBSEQUENT EVENTS.** Except as otherwise provided herein, Guarantor hereby expressly waives the right to receive notice of, to consent to, or receive any additional consideration on account of any of the following, and Guarantor hereby agrees that its obligations under this Guaranty shall not be released, diminished, impaired, reduced, or otherwise affected by the occurrence of any of the following events (or the fact that any of such events have occurred):

- (a) The amendment, renewal, extension, restatement, or assignment of any part or all of the Guaranteed Obligations or any of the plans and specifications, the Loan Documents, or other documents evidencing, securing, or pertaining thereto, or any other forbearance or agreement by the City to accept a deferred payment or performance of any Guaranteed Obligations; and
- (b) The cancellation of any part of the Guaranteed Obligations or the release of Borrower, Guarantor, or any other Person from liability for all or any part of the Guaranteed Obligations; it being acknowledged and agreed by Guarantor that Guarantor may be required to pay or perform the Guaranteed Obligations in full without the assistance or support of any other party, and no Guarantor has been induced to enter into this Guaranty on the basis of any contemplation, belief, understanding, or agreement that any other party shall at all times be liable to pay or perform the Guaranteed Obligations or that the City shall look to other parties to pay or perform the Guaranteed Obligations.

10. **AUTHORITY TO MODIFY GUARANTEED OBLIGATIONS.** Guarantor authorizes the City at any time and from time to time without notice and without affecting the liability of Guarantor hereunder, to: (a) alter the terms of all or any part of the Guaranteed Obligations and any security and guaranties therefor, including without limitation modification of times for payment and rates of interest; (b) accept new or additional instruments, documents, agreements, security, or guaranties in connection with all or any part of the Guaranteed Obligations; (c) accept partial payments on the Guaranteed Obligations; (d) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate, and enforce all or any part of the Guaranteed Obligations and any security or guaranties therefor, and apply any such security and direct the order or manner of sale thereof (and bid and purchase at any such sale), as the City, in the City's sole discretion, may determine; (e) release Borrower, any Guarantor, and/or any other Person from any personal liability with respect to all or any part of the Guaranteed Obligations; and (f) assign this Guaranty in whole or in part to a person or entity that becomes the holder or owner of the Note.

11. **SUBORDINATION.** Guarantor subordinates all present and future indebtedness owing by Borrower or, during the existence of a Default, by any other guarantor of the Loan, to Guarantor to the obligations at any time owing by Borrower to the City under the Note and the other Loan Documents. Guarantor assigns all such indebtedness to the City as security for this Guaranty, the Note and the other Loan Documents. Guarantor agrees to make no claim for such indebtedness until all obligations of Borrower under the Note and the other Loan Documents have been fully discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless the City is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If the City so requests, (a) all instruments evidencing such indebtedness shall be duly endorsed and delivered to the City, (b) all security for such indebtedness shall be duly assigned and delivered to the City, (c) such indebtedness shall be enforced, collected and held by Guarantor as trustee for the City and shall be paid over to the City on account of the Loan but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (d) Guarantor shall execute, file and record such documents and instruments and take such other action as the City deems necessary or appropriate to perfect, preserve and enforce the City's rights in and to such indebtedness and any security therefor. If Guarantor fails to

take such action, the City, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

12. **MISCELLANEOUS PROVISIONS.**

- (a) **Costs of Enforcement.** If the City incurs any reasonable attorney's fees or costs in enforcing or defending any provisions of this Guaranty and is the prevailing party with respect to the same or incurs any costs in collecting any amounts due hereunder, with or without the hiring of an attorney or the filing of any legal action or proceeding, Guarantor shall pay to the City, promptly upon demand, all such costs and the amount of all reasonable attorneys' fees incurred. Guarantor also agrees to pay interest at the Default Rate on the amount of any other payment it is required to make hereunder that it fails to make when due.
- (b) **Binding Effect.** This Guaranty and all the terms, provisions, and conditions hereof shall be binding upon Guarantor and Guarantor's heirs, legal representatives, successors, and assigns, and this Guaranty shall inure to the benefit of the City and its successors and assigns and all subsequent holders of the Guaranteed Obligations.
- (c) **Governing Law.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Texas.
- (d) **No Waiver.** Any failure by the City to insist, or any election by the City not to insist, upon strict performance by Guarantor of any of the terms, provisions, or conditions of this Guaranty shall not be deemed to be a waiver of the same or of any other terms, provisions, or conditions thereof; and the City shall have the right at any time or times thereafter to insist upon strict performance by Guarantor of any and all of such terms, provisions, and conditions.
- (e) **Counterparts.** This Guaranty may be executed by the parties hereto separately in any number of counterparts, each of which shall be an original and all of which collectively shall constitute one and the same agreement.
- (f) **Nature of Guaranty.** The obligations, covenants, agreements and duties of each Guarantor under this Guaranty Agreement shall be joint and several with Borrower and each other Guarantor, shall be irrevocable, absolute and unconditional, shall remain in full force and effect until the Completion Date or full satisfaction of Guarantor's obligations under this Guaranty Agreement, and shall in no way be affected or impaired by reason of the happening from time to time of any other event.
- (g) **No Remedy Exclusive.** No remedy conferred upon or reserved to the City herein 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 under this Guaranty or any instrument executed by any Guarantor to secure this Guaranty or in connection herewith, or now or hereafter existing at law or in equity.
- (h) **Jury Waiver.** **GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. GUARANTOR, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR ITS BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY OR THE GUARANTEED OBLIGATIONS.**
- (j) **Notice.** All Notices sent under this Guaranty shall be delivered in the manner set forth in the Agreement for delivery of notice.

This Guaranty shall be binding upon the successors and assigns of the undersigned. The parties agree that each party may sign and deliver this Guaranty electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature.

Executed to be effective as of the _____ day of _____, 20____.

GUARANTOR:

DMA DEVELOPMENT COMPANY, LLC,
a Texas limited liability company

By: _____
Diana McIver, Manager

Attachment H

RESERVED

**ATTACHMENT I
TO LOAN AGREEMENT**

INTERCREDITOR, SUBORDINATION AND FUNDING AGREEMENT

INTERCREDITOR, SUBORDINATION, AND FUNDING AGREEMENT

RECORD AND RETURN TO:

THE CITY OF HOUSTON
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community County: Harris
Development Department

This INTERCREDITOR, SUBORDINATION, AND FUNDING AGREEMENT (the "**Agreement**") is entered into effective as of _____, 2022 (the "**Effective Date**"), among **City of Houston**, a Texas home-rule municipality (the "**City**"), **Capital One National Association**, a national banking association (the "**Senior Lender**"), **Houston DMA Housing II, LLC**, a Texas limited liability company (the "**Borrower**"). All such parties, together with their respective permitted successors and assigns, are collectively referred to as the "**Parties**" and individually referred to as a "**Party**" to this Agreement.

RECITALS:

A. The Borrower was formed through a limited liability company DMA Ella Grand, LLC, as the managing member and RBC Community Investments, LLC, or its affiliated entity or assign, as the investor member. The Borrower proposes to develop property, that includes the acquisition, design, development, construction and operation of a 128-unit multifamily residential project located in the City of Houston, Harris County, Texas, known or to be known as 2077 South Gessner Road in Houston, Harris County, Texas 77063 (the "**Project**").

B. Borrower owns in fee simple in the real property more particularly described in **Exhibit A** attached hereto (the "**Property**").

C. Borrower has arranged for Project financing from the Senior Lender, the City, low income housing tax credit equity and supplemental funds from the Texas Department of Housing & Community Affairs to develop and operate the Project.

D. Subject to satisfaction of certain requirements of Senior Lender, Senior Lender has agreed to make a loan of up to \$16,000,000.00 to the Borrower, to be converted into a permanent loan of up to \$6,500,000.00, (collectively, the "**Senior Loan**") to be used for eligible costs of the Project. The Senior Loan is secured by that certain Multifamily Deed of Trust, Assignments of Leases and Rents, Security Agreement and Fixture Filing (Texas) (the "**Senior Deed of Trust**") and will be advanced to Borrower pursuant to that certain Construction Loan Agreement, dated as of _____, 2022, by and between Borrower and Senior Lender (the "**Senior Loan Agreement**"). The documents and agreements evidencing, securing or relating to the Senior Loan are listed in Part 1 of **Exhibit B** attached hereto (collectively, "**Senior Loan Documents**").

E. Subject to satisfaction of certain requirements of the City, the City has agreed to lend to Borrower the sum of Twelve Million Dollars and No/100 (\$12,000,000) (the "**City Loan**"),

(together with the Senior Loan, collectively, "**Sources**"). The City Loan will be loaned to Borrower for the residential development and construction costs of the Project, as provided in the City Loan Documents (as hereinafter defined), including that certain Loan agreement by and between the City and Borrower, dated as of _____, 2022 (the "**City Loan Agreement**").

F. Subject to satisfaction of certain requirements of the Texas Department of Housing and Community Affairs (the "**TDHCA**"), the TDHCA has agreed to lend to Borrower the sum approved by TDHCA, not to exceed \$3,000,000.00, (the "**TDHCA Loan**").

G. The City Loan shall be secured by a Deed of Trust, Security Agreement and Financing Statement; and, the TDHCA Loan shall be secured by a Deed of Trust (with Security Agreement and Assignment of Rents) dated _____ (collectively, "**Junior Deeds of Trust**"). The documents and agreements evidencing, securing or relating to the City Loan are listed in Part 2 of **Exhibit B** attached hereto (collectively, "**City Loan Documents**", and together with the Senior Loan Documents, collectively are referred to as the "**Funding Documents**").

H. The City and TDHCA have agreed to enter into a Subordination Agreement in substantially the form shown in **Exhibit D** attached hereto (the "**TDHCA Subordination Agreement**").

I. The City, and Senior Lender, are collectively referred to as the "**Funders**" and individually referred to as a "**Funder**".

J. The purpose of this Agreement, among other things, is: (i) to set forth the relative priorities of funding the Borrower's equity and each Funder's component of the total Project costs; and (ii) to set forth procedures to be followed in the event of the occurrence of an event of default under the various agreements of the Borrower with the Funders.

AGREEMENT:

NOW, THEREFORE, for a good and valuable consideration, including the mutual promises of the Parties contained herein, the Parties agree as follows:

SECTION 1. LOAN AND GRANT

1.0 **Notice of Assignment.** Each Funder shall give the other Parties written notice of any assignment of any of their respective servicing and loan administration rights in connection with their Funding Documents as soon as reasonably practical following the effective date of any such assignment. No consent is required for the Senior Lender to assign the servicing and loan administration rights in Senior Loan.

1.1 **Consent.** Subject to the terms and provisions of this Agreement, Senior Lender hereby consent to the execution, delivery and performance of the City Loan Documents and the recording of the Junior Deeds of Trust and other liens securing same in the Official Records of Harris County, Texas.

SECTION 2. AFFORDABILITY RESTRICTIONS

2.0 Priority of Affordability Restrictions. As required by the terms of the City Loan, the Borrower has also executed the Restrictive Covenants dated as of the Effective Date, which imposes certain land use restrictions on the Property (the "**City Restrictions**"). The Borrower and the Texas Department of Housing and Community Affairs intend to enter into a Land Use Restriction Agreement, which will impose certain restrictions on the Property ("**LIHTC Restrictions**"). The City Restrictions and the LIHTC Restrictions are collectively referred to as the "**Affordability Restrictions**". The Parties expressly consent to the Affordability Restrictions and stipulate, acknowledge, and agree that, the City Restrictions and the LIHTC Restrictions shall have equal priority to one another.

SECTION 3. SECURITY DOCUMENTS.

3.0 Subordination to Affordability Restrictions. The Affordability Restrictions shall at all times be superior to all of the deeds of trust on the Project (including, without limitation, all deeds of trust described herein) and all other liens, security interests, assignments, and pledges (collectively, "**Security Documents**") now or hereafter given to secure the Sources, as applicable. The Affordability Restrictions shall encumber and bind the fee estate. The Junior Deeds of Trust securing the Junior Loans and the Senior Deeds of Trust are expressly subordinate to the Affordability Restrictions. Notwithstanding anything herein to the contrary, in the event of the foreclosure of any of the Security Documents, the City Restrictions shall remain in full force and effect with respect to the Property (subject to the terms thereof), but the LIHTC Restrictions shall terminate in accordance with the terms of the LIHTC Restrictions.

3.1 Priority of Security Documents. Notwithstanding the dates of execution, order of recording or other apparent priority of the Security Documents securing the City Loan, the City expressly stipulates, acknowledges and agrees that the Security Documents securing the City Loan shall at all times be subordinate to the Security Documents securing the Senior Loan and the Security Documents shall have the following priority relative to each other, regardless of the frequency or manner of renewal, extension, change or alteration thereof:

- (1) First Priority: Senior Deed of Trust which encumbers the Property;
- (2) Second Priority: Junior Deeds of Trust which encumber the Property, subject to and in accordance with the TDHCA Subordination Agreement.

3.2 No Modifications. The City may from time-to-time enter into modifications, renewals, extensions, and replacements of the loans evidencing the City Loan Documents without the further consent of Senior Lender so long as such agreements recite that they are, and shall be at all times, subject to the terms of this Agreement and so long as those agreements do not increase the principal amount or the amount of the periodic installments due under the City Loan Documents or increase the interest rate. Unless and until all of the Senior Loan secured by the Project is fully paid and satisfied and the obligations of Senior Lender to make any further loans or advances under the Senior Loan have ceased and terminated, the City will not, without the consent of the Senior Lender, take any additional collateral for the City Loan. Senior Lender shall not amend the Senior Loan Documents without the prior written consent of the Director of the

City's Housing and Community Development Department, with any administrative consents (as opposed to consents required from the City Council) not to be unreasonably withheld, if such amendment will have the effect of (i) increasing the principal amount of the Senior Loan or any amounts payable to the Senior Lender or Construction Lender, except that amounts advanced by Senior Lender relating to the construction, development, operation and/or protection, preservation, and maintenance of the Project or protecting its lien, including repairs, taxes, insurance, and legal fees and other expenses of collection or defense of Senior Lender's lien or the security therefor in accordance with the Senior Loan Documents shall not require consent (however notice will be provided), (ii) increasing the rate of interest of the Senior Loan, other than default interest and late charges, (iii) shortening the maturity of the Senior Loan, or (iv) increasing or decreasing the monthly payments or escrows for taxes, insurance, and other reserves on the Senior Loan except as may necessary to cover actual increases in the costs of taxes and insurance. Senior Lender may otherwise amend the Senior Loan Documents without the City's prior written consent. Notwithstanding the foregoing, however, in no event shall any such modification be made, and the City shall be obligated to consent to any modification, that amends or terminates the Affordability Restrictions, other than a modification that extends the period during which the Affordability Restrictions encumber the Property.

Any provision in the Senior Loan Documents that purports to secure "other indebtedness" that is unrelated to the Senior Loan and the Property shall be ineffective as against the City and the City's Security Documents, and the Security Documents of the City shall have priority over any such "other indebtedness."

3.3 Collateral. Each of the items referenced above constituting collateral together with all equipment, accounts, general intangibles, fixtures and other personal property used or acquitted for use, on or in connection with the use or operation of the Project) being referred to collectively as the "Collateral."

3.4 Secured Parties. The Funders are sometimes called the "Secured Parties" in this Agreement.

SECTION 4. PROCEDURES FOR DISBURSEMENT REQUESTS AND FUNDING.

4.0 Applications for Payments.

(a) Funding under the Funding Documents will be in accordance with the requirements of and for the items allowed under each Funder's Funding Documents. Unless otherwise agreed, the Borrower shall submit its applications for payment (each an "Application for Payment") no more frequently than once in any thirty (30) day period.

(b) The City (subject to the terms and conditions of the City Loan Documents) and Borrower agree that the advances and funding for the acquisition of the Property and the construction of the Project using proceeds from the City Loan shall occur in accordance with a draw schedule approved by the City and for items set forth on the final construction budget approved by the Borrower, the City and the Senior Lender (the "Final Construction Budget"). Other than any initial acquisition costs paid at the financial closing, the City funding for construction draws approved by the City (the "City Loan Proceeds") shall be paid by the City

into an account controlled by the Senior Lender located at the Senior Lender and held in the name of Borrower (the "**Construction Account**"). It is acknowledged and agreed that once the City Loan Proceeds are advanced by the City into the Construction Account, such funds may be drawn for costs of the Project approved by Senior Lender.

(c) The Borrower represents and warrants to the Funders, as of the Effective Date and as of the date of each Application for Payment, that neither the Borrower nor the Project is in breach of or in default under any of the Funding Documents.

(d) The Borrower agrees that the Funders may share information that each Funder may acquire with respect to the Borrower and/or the Property, and consents to the transfer of such information, whether financial or otherwise, between them, without having to obtain the Borrower's consent.

4.1 Inspections. As of the Effective Date, the City and the Senior Lender will engage an inspector, acceptable to them (the "**Inspector**"), to inspect the progress of construction of the Project and verify the completion of the work covered by the Application for Payment in accordance with the final plans approved by all Parties (together with any change orders approved by the City and the Senior Lender in accordance with their respective Funding Documents). The Inspector shall furnish its report to all City and the Senior Lender at their addresses provided for notice below after receipt of an Application for Payment.

4.2 Objections. Upon receipt of the Inspector's report, if any Funder objects to an item or a portion thereof included in the Application for Payment or the Inspector's report, such Funder shall make reasonable efforts to notify the drawing party and all other Funders within **FIVE (5) BUSINESS DAYS** after receipt of the Inspector's report. Upon the giving of notice of such objection from any Funder, the Funders shall be relieved of any obligation (but shall have the right) to make a disbursement for the item or portion thereof contained in the Application for Payment until such time as the drawing party has cured the objection to the reasonable satisfaction of the Funders. Notwithstanding the foregoing or anything else to the contrary herein, advances shall in any event be subject to compliance with each Funder's Funding Documents.

4.3 Funding Sequence. Funding under the Funding Documents shall occur in the following order, or in combination, subject to each Funder's Funding Documents and requirements:

(a) Subject to the terms and provisions of the Senior Loan Agreement, Senior Lender shall first advance proceeds of the Senior Loan for origination or similar loan fees associated with the Senior Loan and attorneys' fee associated with the Senior Loan to the extent budgeted and covered by the Senior Loan;

(b) City shall advance City Loan Proceeds for approved Property acquisition costs at the financial closing and deposit the remainder of City Loan Proceeds into the Construction Account, subject to the requirements of the City Loan Documents;

(c) Senior Lender, on behalf of the City in accordance with Section 4.0 hereof, shall fund draw requests for costs of the Project contained in the Final Construction Budget and

approved by Senior Lender from City Loan proceeds held in the Construction Account (net 10% retainage); and

(d) After the City Loan proceeds deposited into the Construction Account are fully funded pursuant to (c) above, and after the funding of all Borrower equity which is to be funded prior to completion as set forth in the Senior Loan Agreement and the full funding of the TDHCA Loan (net of required retainages), subject to the terms and conditions of the Senior Loan Agreement, Senior Lender will then advance under the Senior Loan for monthly draw requests made in accordance with the terms of the Senior Loan Agreement until the Senior Loan is fully advanced (net of required retainage). Notwithstanding the foregoing the parties acknowledge that the Senior Loan Agreement provides for certain instances when the Senior Lender may agree to fund portions of the Senior Loan before the funding of the City Loan, Borrower's equity, and the TDHCA Loan. Further, notwithstanding anything herein to the contrary, any deposits made to satisfy balancing requirements in the Senior Loan Agreement will in any event be used before any other sources for funding monthly draw requests (such sources include the Senior Loan, the City Loan, Borrower's equity, and the TDHCA Loan).

Notwithstanding the foregoing funding order, the parties acknowledge that the Senior Loan has an unfunded interest reserve which will be drawn upon monthly as provided for in the Senior Loan Agreement to pay interest as it accrues on the Senior Loan.

The purpose of this Section is to designate funding order and not to create funding obligations between Senior Lender and City. The obligations of the City and the Senior Lender to fund are subject to the terms and conditions of their respective Loan Agreements.

4.4 Approvals. Except as provided herein, the City shall not be required to obtain approval from any other Party prior to funding of any amounts under the City Loan Documents.

SECTION 5. DEFAULTS AND REMEDIES

5.0 Notice of Default. Upon the occurrence of a default by the Borrower under any of the Funding Documents, which default remains uncured in excess of ten (10) days after the provision of notice thereof, if notice of that default is given to Borrower under the terms of a Funding Document, Funder agrees to give written notice thereof to the other Funders at the same time as the giving of any written notice of default to the Borrower if the Funder elects to declare such default.

5.1 Funders' Opportunity to Cure. With respect to any monetary default under any Funding Documents, each Funder shall have the right (but not an obligation) to cure any such default during the period that is the longer of (i) thirty (30) days from the date such notice of default is given to the Funders; or (ii) five (5) days after the expiration of any cure period provided to the Borrower under any applicable Funding Documents. With respect to any non-monetary default by the Borrower under any Funding Documents, each Funder shall have the right (but not an obligation) to cure any such default during the period that is the longer of (i) sixty (60) days from the date such notice of default is given to such Funder; or (ii) five (5) days after the expiration of any cure period provided to the Borrower under any applicable Funding Documents. Senior Lender agrees that it will not accelerate the Senior Loan, or exercise any remedies under the Senior

Loan Documents unless the other Funders fail to cure such defaults prior to the expiration of the cure periods stated herein, and if any portion of the Senior Loan has previously been or is thereafter accelerated, Senior Lender agrees to reinstate the Senior Loan in accordance with its original terms, upon the cure of the defaults under the Senior Loan Documents within such cure period. The failure of any Funder to provide any notice to another Funder shall not affect the validity of such notice or any obligation of the Borrower to any Funder and shall not affect the relative priorities between the Senior Loan and the Junior Loans as set forth herein. Borrower covenant and agree to forward to City, within three (3) business days of their receipt thereof, a copy of any notice of a default under the Senior Loan that Borrower receive from the Senior Lender.

5.2 Notice of Acceleration. Each Funder agrees that it will provide any notice of intention to accelerate obligations owed by the Borrower to the other Funders at the same time that such notice is given to the Borrower. Notwithstanding the foregoing, unless the Senior Lender shall consent thereto in writing or the City shall purchase the Senior Loan pursuant to Section 5.4, the City shall not accelerate their respective loans or otherwise enforce of its remedies pursuant to an Enforcement Action unless and until the Senior Loan is fully paid and Senior Lender has no further funding commitments.

5.3 Continuation of Project. If foreclosure is authorized by Sections 5.1-5.3, in connection with any foreclosure of the Security Documents, the City stipulate and agree that they will cooperate diligently, in good faith and using reasonable efforts to identify and engage a qualified operator for the Project to replace the Borrower, for purposes of completing construction of the Project and operating the Project during the term of the Affordability Restrictions to provide housing for very-low and low-income families, provided, however, that any replacement operator shall be subject to the approval of the Senior Lender, which shall not be unreasonably withheld, delayed or conditioned.

5.4 The City shall have the right, but not the obligation, in lieu of curing any default under the Senior Loan Documents to purchase the Senior Loan by paying the outstanding principal amount thereof, plus all accrued and unpaid interest thereon, together with reasonable unreimbursed expenses incurred by the Senior Lender in connection therewith (including actual attorneys' fees) in exchange for an assignment of the Senior Loan and the Senior Loan Documents (including any title policies to the extent allowed by applicable law) and an endorsement of the note evidencing the Senior Loan on forms reasonably acceptable to the City and the Senior Lender. Such transfer shall be without recourse or warranty by the Senior Lender, and the City shall release the Senior Lender from all claims and other liabilities in connection with the Senior Loan.

5.5 The occurrence of a default or event of default after applicable notice and cure periods under the Senior Loan Documents shall cause a default or event of default under the City Loan Documents, and the occurrence of a default or event of default under the City Loan Documents shall cause a default or an event of default under the Senior Loan Documents.

5.6 If done in accordance with the terms of Sections 5.1-5.3, the exercise by the City of any of its rights in and to the collateral for the City Loan, including, without limitation, (i) a foreclosure sale of the Property to the City, or any affiliate of the City, (ii) a conveyance to the City, or any affiliate of the City pursuant to a deed-in-lieu of foreclosure, or (iii) a sale of the Property by the City, or any affiliate of the City, following a conveyance of the Property by

foreclosure or deed-in-lieu of foreclosure, shall not constitute a default under the Senior Loan Documents but any such conveyance shall be subject to the Senior Loan Documents. Conveyances to third parties (other than the City or its affiliates shall require the prior written consent of the Senior Lender which shall not be unreasonably withheld.

SECTION 6. MISCELLANEOUS

6.0 Invalid Provisions. In the event, any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not be affected in any way thereby.

6.1 Waivers and Amendments. No waiver, modification, addition, or amendment to any of the terms hereof shall be binding or effective unless and until made in writing and duly executed by all Parties.

6.2 Time. A “business day” means any day other than Saturday, Sunday, or a holiday during which any of the Funders is not open for business. Any time period expressed as a number of days without expressly specifying business days shall be calculated on the basis of calendar days. With respect to any time period referred to herein, the Parties stipulate, acknowledge, and agree that **TIME IS OF THE ESSENCE OF THIS AGREEMENT**.

6.3 Applicable Law. The interpretation, validity and enforceability of this Agreement shall be governed by and construed under the laws of the State of Texas, and the terms and conditions of this Agreement shall be performed within Harris County, Texas.

6.4 Notices. Except as otherwise provided herein, all notices, demands, requests, and other communications required or permitted hereunder shall be given in writing and sent by (i) personal delivery, or (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) facsimile (provided that such facsimile is confirmed by expedited delivery service or by United States mail in the manner previously described), addressed to the addressee at such party’s address set forth by its signature below, or to such other address as such party may specify by written notice, sent in accordance with this paragraph at least thirty (30) days prior to the date of the giving of such notice. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery, or in the case of mail, as of the date of deposit in an official depository of the United States mail, or in the case of either delivery service, or facsimile, upon receipt. To the extent actual receipt is required, rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was received shall be deemed to be receipt of the notice, demand, request, or other communication sent.

6.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which will constitute an original instrument, all of which will constitute one and the same documents.

6.6 Entirety. This Agreement, including the attached exhibits and documents listed thereon, which are incorporated herein by reference for all purposes, constitute the sole and only agreement of the parties hereto related to the subject matter hereof and correctly sets forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises,

negotiations or representations not expressly set forth in this Agreement are of no force or effect. The signatures of the parties hereto reflect that each of the parties has fully read and realizes the effect of this Agreement, and the parties have executed this Agreement as their free and voluntary act with the full opportunity to be advised by each party's respective counsel.

6.7 No Third-Party Beneficiaries. All of the understandings, agreements, representations, and warranties contained herein are solely for the benefit of the Parties. The Parties do not intend the benefits of this Agreement to inure to any third party. Nothing contained in this Agreement is intended to affect or limit, in any way, the security interests that the Secured Parties may have at any time in the Collateral and so far as the rights of third parties are concerned. Subject to the express terms and provisions of this Agreement, the Secured Parties specifically reserve all of their respective rights and security interests in the Collateral.

6.8 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall inure to the benefit of the Parties and their respective successors and assigns.

6.9 Termination. This Agreement shall terminate upon the later of (i) the expiration of the Affordability Restrictions; (ii) repayment or deemed satisfaction in full of all sums advanced under the City Documents, (iii) the termination of all obligations of the Borrower to the City, or (iv) repayment in full of all amounts advanced under the Senior Loan.

6.10 Signature. This Agreement does not confer any rights on the Borrower in addition to those conferred under the Funding Documents.

6.11 No Joint Venture. The Parties state that it is not their intention to engage in a joint venture and that under no circumstances will either party be deemed to be the agent of the other.

6.12 Casualty and Condemnation. In the event of any casualty or condemnation resulting in insurance or condemnation proceeds being paid to Senior Lender for application to the payment of obligations secured by the Senior Loan Documents, unless the proceeds are used for repair or restoration in accordance with the Senior Deed of Trust, then Senior Lender will remit all proceeds in excess of the portion thereof applied to the full repayment of the Senior Loan to the City, to be distributed in accordance with the provisions of the City Loan Documents.

6.13 Escrow Accounts. Pursuant to the Senior Loan Documents, Senior Lender may require the Borrower to escrow amounts for the payment of taxes and insurance with respect to the Property ("Escrow Accounts"). If Senior Lender requires such Escrow Accounts, then Senior Lender agrees to use such amounts to pay such taxes and insurance as they become due and will not apply such amounts to the Senior Loan. If Senior Lender does not require the Borrower to maintain Escrow Accounts, the City may require (but shall not be obligated to do so) the Borrower to maintain Escrow Accounts and to pledge such Escrow Accounts to the City.

6.14 City with respect to the City Loan hereby agrees:

(a) In the event of any Bankruptcy Proceeding relating to the Borrower and/or the Project or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which the assets or interests of the Borrower are consolidated, then in either

event, the Senior Loan shall first be paid in full before the City shall be entitled to receive and retain any payment or distribution in respect to the City Loan. The City agrees that (i) during the pendency of the Bankruptcy Proceeding, any payment or distribution with respect to the City Loan which the City would be entitled to but for this Agreement (whether in cash, property, or other assets) will be made to the Senior Lender until the Senior Loan is paid in full and (ii) the subordination of the City Loan and any documents securing or executed in connection therewith shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, City hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving the Borrower, the City shall not (i) make or participate in a loan facility to or for the benefit of the Borrower on a basis that is senior to or pari passu with the liens and interests held by Senior Lender pursuant to the Senior Loan Documents, and (ii) shall not contest the continued accrual of interest on the Senior Loan, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.

(b) City with respect to the City Loan covenants and agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents, or except as otherwise herein provided, by any other act or failure to act by Senior Lender. City acknowledges that Senior Lender, at its sole option, may release all or any portion of the Project from the lien of the Senior Deed of Trust, and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and City hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Project by Senior Lender, to require the separate sales of any portion of the Project or to require Senior Lender to exhaust its remedies against any portion of the Project or any other collateral before proceeding against any other portion of the Project or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action (as such terms are hereinafter defined) by the City, except as otherwise provided by applicable law or this Agreement. At any time or from time to time and any number of times, without notice to the City, (a) the time for payment of the Senior Loan may be extended or the Senior Loan may be renewed in whole or in part; (b) the time for the Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Loan may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be extended or consolidated by Senior Lender and the Borrower; and (e) any security for the Senior Loan may be modified, exchanged, surrendered or otherwise dealt with or additional security may be

pledged or mortgaged for the Senior Loan. If, after the occurrence of a default under the Senior Loan, Senior Lender acquires title to any of the Project pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior Deeds of Trust automatically shall terminate with respect to such Project upon Senior Lender's acquisition of title, but the Affordability Restrictions shall remain in place for the term of the applicable Affordability Restrictions. As used in this section, "*Enforcement Action*" means any exercise of any of remedies under the Junior Deeds of Trust, or any of the other City Loan Documents, including, without limitation, any of the following: (i) the acceleration of all or any part of the Junior Loans, (ii) the commencement of any judicial or non-judicial action of proceeding to enforce any obligation of the Borrower under any of the City Loan Documents, collect any monies payable to the Borrower or have a receiver appointed to collect any monies payable to the Borrower, or foreclose the lien(s) created by the Junior Deeds of Trust, (iii) the filing or joining in the filing of any involuntary Bankruptcy Proceeding against the Borrower or any person or entity which owns a direct or indirect interest in the Borrower, (iv) the advertising of or commencement of any foreclosure or trustee's sale proceedings, (v) the exercise of any power of sale, (vi) the acceptance of a deed or assignment in lieu of foreclosure or sale, (vii) the collecting of rents, (viii) the obtaining of or seeking of the appointment of a receiver, (ix) the seeking of default interest, (x) the taking of possession or control of any of the Property, (xi) the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the notes evidencing the City Loan or any other of the City Loan Documents, (xii) the exercising of any banker's lien or rights of set-off or recoupment, or (xiii) the taking of any other enforcement action against the Borrower or any other party liable for any of the City Loan or obligated under any of the City Loan Documents, or the Property, and (ii) "*Enforcement Action Notice*" means a written notice from the City to Senior Lender, given following a default under the City Loan and the expiration of any notice or cure periods provided for such default in the City Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken.

6.15 **Insurance.** Junior Lender agrees that all original policies of insurance required pursuant to the Senior Deed of Trust shall be held by Senior Lender. The preceding sentence shall not preclude Junior Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by the Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Deed of Trust, or that it be named as an additional insured under all policies of liability insurance maintained by the Borrower with respect to the Property.

6.16 **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

6.17 Notice. All notices, demands, certificates, or other communications hereunder shall be in writing and shall be deemed sufficiently given or served for all purposes when delivered personally, when sent by certified or registered mail, postage prepaid, return receipt requested or by private courier service, in each case, with the proper address as indicated below; provided that any such notices, demands, certificates, or other communications shall be deemed effective only upon receipt. Each party may, by written notice given to the other parties, designate any other address or addresses to which notices, certificates or other communications to them shall be sent as contemplated by this Agreement. Until otherwise so provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

SENIOR LENDER:

Capital One, National Association
299 Park Avenue, 14th Floor
New York, New York 10171

CITY:

City of Houston
c/o Department of Housing and Community Development
2100 Travis, 9th floor
Houston, TX 77002
Attention: Director

With copy to:

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: City Attorney

BORROWER:

Houston DMA Housing II, LLC
4101 Parkstone Heights Drive, Suite 310
Austin, TX 78746
Attention: Janine Sisak, SVP / General Counsel

With a copy to:

Coats Rose, P.C.
2700 Via Fortuna, Terrace 2, Suite 350
Austin, TX 78746
Attention: Scott A. Marks
E-mail: smarks@coatsrose.com

With a copy to:

RBC Community Investments, LLC
600 Superior Avenue, Suite 2300
Cleveland, OH 44114
Attention: General Counsel

And a copy to:

Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, IL 60605
Attn: Bennett P. Applegate

6.18 In connection with the conversion of the Senior Loan to a Permanent Senior Loan (as defined in the City Loan Agreement) to Borrower by the Permanent Senior Lender (as defined in the City Loan Agreement), City agrees to enter into the permanent subordination agreement in substantially the form attached hereto as Exhibit C (the "**Permanent Subordination Agreement**"), which shall govern the rights as to Permanent Senior Lender.

[Remainder of this page intentionally left blank; signature pages follow.]

Signature Page

Intercreditor, Subordination and Funding Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as set forth below.

SENIOR LENDER:

CAPITAL ONE, NATIONAL ASSOCIATION

By: _____
Name: David J. Musial
Title: Senior Director

STATE OF _____ §
 §
COUNTY OF _____ §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2022, by David J. Musial, the Senior Director of CAPITAL ONE, NATIONAL ASSOCIATION on behalf of said association.

NOTARY PUBLIC - THE STATE OF _____

Printed Name of Notary
My commission expires: _____

BORROWER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this _____ day of _____, 20__
by _____, the _____ of _____, a _____, on behalf of such
_____.

NOTARY PUBLIC - THE STATE OF _____

Printed Name of Notary

My commission expires: _____.

CITY:

CITY OF HOUSTON, TEXAS

SEAL/ATTEST:

Pat Jefferson Daniel, City Secretary

Sylvester Turner, Mayor

APPROVED:

COUNTERSIGNED:

Keith W. Bynam, Director
Housing and Community Development
Department

Chris B. Brown, Controller

APPROVED AS TO FORM:

COUNTERSIGNATURE DATE:

Senior Assistant City Attorney
LD# _____

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 20__, by _____ for Sylvester Turner, Mayor of the CITY OF HOUSTON, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed Name of Notary

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

***The legal description will be finalized and incorporated prior to financial closing with the prior written consent of the Director.**

EXHIBIT B

SENIOR LOAN DOCUMENTS

Part 1: Senior Loan Documents

***To be finalized and incorporated prior to financial closing with the prior written consent of the Director.**

Part 2: City Loan Documents

1. Loan Agreement (Borrower and City)
2. Restrictive Covenants
3. Note (Borrower to City)
4. Deed of Trust, Security Agreement and Financing Statement
5. Guaranty of Completion of Improvements Pursuant to Loan Agreement
6. Environmental Indemnity Agreement
7. Assignment of Property Management Agreement
8. Assignment of Architect's Contract, Plans and Specifications, and Consent
9. Assignment of Construction Contract and Consent
10. One Year Maintenance Bond, Performance and Payment Bond
11. Certification Regarding Lobbying
12. One (1) UCC
13. One (1) UCC-3 Assignment
14. Certification Regarding Debarment
15. Affidavit of Use of Funds
16. Closing Certificate
17. Affidavit – No Commissions

EXHIBIT C

PERMANENT SUBORDINATION AGREEMENT

[Attached.]

Prepared by, and after recording
return to:
Cassin & Cassin LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attn: Recording Department

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 6-15-2020)

Freddie Mac Loan Number: _____
Property Name: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 6-15-2020)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 20__, by and between (i) [SELLER/SERVICER], a _____ organized and existing under the laws of the [State] [Commonwealth] of _____ (“**Senior Lender**”) and (ii) [GOVERNMENTAL ENTITY], a _____ organized and existing under the laws of the [State] [Commonwealth] of _____ (“**Subordinate Lender**” or “**City**”).

RECITALS

- A. [NAME OF BORROWER], a [limited partnership/limited liability company/corporation] organized under the laws of the [State] [Commonwealth] of _____ (“**Borrower**”) is the owner of certain land located in _____ County, [STATE], described in Exhibit A (“**Land**”). The Land is improved with a multifamily rental housing project (“**Improvements**”).
- B. Senior Lender has made or is making a loan to Borrower in the original principal amount of \$ _____ (“**Senior Loan**”) upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of _____ between Senior Lender and Borrower (“**Senior Loan Agreement**”) in connection with the Mortgaged Property. The Senior Loan is secured by a [NAME OF SENIOR MORTGAGE] dated as of the date of the Senior Loan Agreement (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a Loan Agreement dated [as of] _____ between City and Borrower (“**City Loan Agreement**”), City has made or is making a loan to Sponsor in the original principal amount of \$12,000,000.00 (“**City Loan**”), that is or will be secured by a Deed of Trust, Security Agreement and Financing Statement dated [as of] _____ (“**Subordinate Mortgage**”) encumbering all or a portion of the Borrower’s interest in the fee estate.
- D. The Senior Mortgage [is] [will be] recorded in [DESCRIBE APPLICABLE RECORDING OFFICE] (“**Recording Office**”) at [INSERT RECORDING INFORMATION IF KNOWN]. The Subordinate Mortgage [is] [will be] recorded in the Recording Office at [INSERT RECORDING INFORMATION IF KNOWN] [INCLUDE IF SUBORDINATE MORTGAGE IS NOT ALREADY OF RECORD: following the recording of the Senior Mortgage].

- E. The execution and delivery of this Agreement is a condition of Senior Lender's [CHOOSE ONE: making of the Senior Loan OR consenting to Subordinate Lender's making of the Subordinate Loan and Borrower's granting of the Subordinate Mortgage].

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings:

The terms "**Condemnation,**" "**Imposition Deposits,**" "**Impositions,**" "**Leases,**" "**Rents**" and "**Restoration,**" as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

"**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

"**Borrower**" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Lender if Senior Lender acquires title to the Mortgaged Property.

"**Casualty**" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

"**Enforcement Action**" means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“Enforcement Action Notice” means a Notice given from Subordinate Lender to Senior Lender following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“Lien” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“Loss Proceeds” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“Notice” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“Regulatory Agreement” means the Restrictive Covenants between Borrower and City dated [as of] _____, _____ and [recorded] [to be recorded] [at] **[INSERT RECORDING INFORMATION IF AVAILABLE]** in the Recording Office of _____, County, **[NAME OF STATE OR COMMONWEALTH]**.

“Senior Indebtedness” means the “Indebtedness” as defined in the Senior Loan Agreement.

“Senior Lender” means the “Lender” as defined in the Senior Mortgage. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“Senior Loan Documents” means the “Loan Documents” as defined in the Senior Loan Agreement, as such documents may be amended.

“Senior Mortgage Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Agreement.

“Senior Note” means the promissory note or other evidence of the Senior Indebtedness and any replacement of the Senior Note.

“Subordinate Indebtedness” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“**Subordinate Lender**” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“**Subordinate Loan Documents**” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage” means the Subordinate Mortgage as defined in the recitals.

“**Subordinate Mortgage Default**” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), Subordinate Lender to take an Enforcement Action.

“**Subordinate Note**” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

[PROVISION FOR SOFT DEBT]

“**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (a) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Deposits.
- (b) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender’s Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$_____.
 - (iv) No scheduled payments under the Subordinate Note have been prepaid.

- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times, **except as provided in Section 3(f) hereof**, continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Senior Loan Default [; Soft Subordinate Debt]. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date [**PROVISION FOR SOFT DEBT**: and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash].
- (d) Payments After Senior Loan Default or Bankruptcy.
 - (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.

- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.
- (f) **Priority of Regulatory Agreement. Senior Lender and Subordinate Lender hereby agree that, notwithstanding anything to the contrary set forth elsewhere herein, the Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of the Borrower relating to maintenance, tenant lease provisions, income, rent or affordability restrictions contained in the Regulatory Agreement and, following a foreclosure under the Senior Mortgage, or the acceptance by Senior Lender of a deed to the Mortgaged Property in lieu of such a foreclosure (each, a "Foreclosure Action"), the Regulatory Agreement shall survive and the successor owner of the Mortgaged Property shall acquire the Mortgaged Property subject to all of the terms and conditions of the Regulatory Agreement, except as otherwise expressly provided below:**
 - 1. No successor owner shall be obligated under the Regulatory Agreement to make any payment under, or to otherwise comply with, any of the other Subordinate Loan Documents;**
 - 2. The Foreclosure Action and the transfer of the Mortgaged Property pursuant to the Foreclosure Action will not violate the limitations on**

transfers in the Regulatory Agreement or require the approval of the Subordinate Lender. Neither the successor owner initially acquiring title to the Mortgaged Property as a result of a Foreclosure Action, nor its immediate successor in interest, shall be subject to any of the limitations upon creation of indebtedness nor creation of any lien securing indebtedness set forth in the Regulatory Agreement; provided that any subsequent mortgagee or lienholder with respect to such indebtedness shall agree that in the event of foreclosure or deed in lieu of foreclosure, the transferee under such foreclosure agrees that it will take subject to the Regulatory Agreement; and provided further that all other subsequent encumbrances shall be subject to Subordinate Lender's approval under the Regulatory Agreement. Any sale, assignment or transfer of the Mortgaged Property following a transfer pursuant to a Foreclosure Action shall be subject to Subordinate Lender's rights under the Regulatory Agreement to approve such transfer, except that Subordinate Lender agrees that its decision to approve any such sale, assignment or other transfer will be based solely upon whether the proposed transferee is qualified to manage and operate affordable housing projects similar to the Mortgaged Property, and the Subordinate Lender will not unreasonably withhold, delay or condition its consent to any such proposed transfer;

3. No successor owner would be obligated to pay, or otherwise have any liability for or in connection with, any claim by Subordinate Lender for liquidated damages, for indemnification or for damages in connection with any breach of any term or provision of the Regulatory Agreement first occurring prior to the date upon which such successor owner acquired title to the Mortgaged Property;
4. No successor owner shall be required to cure any default under the Regulatory Agreement first occurring prior to the date upon which such successor owner acquired title to the Mortgaged Property, except that each successor owner shall be required to cure continuing defaults under the Regulatory Agreement related to the Mortgaged Property; provided further, however, that each such successor owner shall have 120 days after the date upon which it acquires title to the Mortgaged Property to cure such continuing defaults, or, if any such continuing default is not reasonably susceptible to a cure by such owner within such period, to commence curing such default (and in such latter case, such owner shall thereafter continuously and diligently pursue the cure of such default to completion);
5. All reserve requirements imposed by the Regulatory Agreement shall, after any Foreclosure Action, be deemed satisfied so long as comparable reserves are established and held by the applicable successor owner's lenders; and

6. The Subordinate Lender, after a Foreclosure Action, shall not unreasonably withhold, delay or condition any consent or approval contemplated by the Regulatory Agreement.

4. Default Under Subordinate Loan Documents.

(a) Notice of Subordinate Loan Default and Cure Rights.

(i) Subordinate Lender will deliver to Senior Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.

(ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:

(A) Discontinues its pursuit of any cure.

(B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.

(iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.

(iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

(i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice.

During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).

- (ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
- (iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
- (iv) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

- (i) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
- (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:
 - (A) To conduct a separate sale of any portion of the Mortgaged Property.

(B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.

(C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines. **[ADD FOR CALIFORNIA TRANSACTIONS: Subordinate Lender waives to the fullest extent permitted by law any and all benefits under California Civil Code Sections 2845, 2849 and 2850.]**

(ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:

(A) Extend the time for or waive any payment or performance under the Senior Loan Documents.

(B) Modify or amend in any respect any provision of the Senior Loan Documents.

(C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. **Conflicts.** If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

(a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.

(b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.

(c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
- (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
- (iii) If Senior Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this

Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.

- (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter **except release or modification of the Regulatory Agreement**, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of

the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).

- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (h) Certification. Within 10 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. Refinancing. Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. Governmental Powers. Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. Notices.

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been

received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

[Name]
[Address]
Attention:

Notices intended for Subordinate Lender will be addressed to:

[Name]
[Address]
Attention:

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.

- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
- (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
 - (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
 - (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 4(b)(iv), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right,

power, or remedy or the exercise of any other right, power or remedy under this Agreement.

- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR LENDER:

[NAME OF SELLER/SERVICER]

By: _____
Name: _____
Title: _____

[Notary Block for recordation]

SUBORDINATE LENDER:

[CITY]

By: _____
Name: _____
Title: _____

[Notary Block for recordation]

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 20__, by and between **[NAME OF SELLER/SERVICER]** and **[NAME OF GOVERNMENTAL ENTITY]** and consents to the agreement of the parties set forth in this Agreement.

[NAME OF BORROWER]

By: _____

Name: _____

Title: _____

Date: _____

[Notary Block for recordation]

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT D

TDHCA SUBORDINATION AGREEMENT

[Attached.]

RECORD AND RETURN TO:

THE CITY OF HOUSTON

P. O. Box 1562

Houston, TX 77251-1562

Attention: Director, Housing and Community County: Harris
Development Department

----- [Space Above This Line For Recording Data] -----

SUBORDINATION AGREEMENT

This Subordination Agreement (the "**Agreement**") is entered into as of _____, 20█, by and among **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the "**TDHCA Lender**"), **CITY OF HOUSTON**, a Texas home-rule municipality (the "**City Lender**"), and █, a █ ("**Borrower**").

RECITALS:

- A. Borrower is the owner of █, a █-unit multifamily rental [elderly] housing development (the "**Project**") to be constructed on real property located in █, █ County, Texas, more specifically described in **Exhibit "A"** attached hereto and incorporated herein by reference (collectively with Project, the "**Property**").
- B. The TDHCA Lender has made or is making a loan to the Borrower in the original principal amount of \$█. The loan is or will be secured by a █ Deed of Trust (with Security Agreement and Assignment of Rents) dated █ (the "**TDHCA Mortgage**"), [to be recorded] [recorded under/in █] in the Official Public Records of Harris County, Texas (the "**Records**") encumbering the Property.
- C. The City Lender has made or is making a loan to the Borrower in the original principal amount of \$█. The loan is secured by a Fee Deed of Trust, Assignment of Rents and Security Agreement and Leasehold Deed of Trust, Assignment of Rents and Security Agreement dated of even date herewith, to be recorded, in the Records (collectively, the "**City Mortgage**") encumbering the Property.
- D. The execution and delivery of this Agreement is a condition of TDHCA Lender's making of the TDHCA Mortgage loan.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City Lender, Borrower and the TDHCA Lender hereby agree as follows:

1. Permission to Place Mortgage Lien Against Property. TDHCA Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the TDHCA Loan Documents and subject to the provisions of this Agreement, to permit the City Mortgage and other recorded City Loan Documents to be recorded against the Property to secure Borrower's obligation to repay the City Note and all other obligations, indebtedness and liabilities of Borrower to the Department under and in connection with the City Mortgage loan.

2. Definitions.

- (a) **"TDHCA Loan Default"** means the occurrence of an "Event of Default" as that term is defined in the TDHCA Loan Documents.
- (b) **"TDHCA Loan Documents"** means the [subordinate] [leasehold] promissory note dated ■ by Borrower made payable to the TDHCA Lender in the original principal amount of \$■, and any replacement thereof (the **"TDHCA Note"**), that certain Land Use Restriction Agreement (Multifamily Properties) dated _____, executed by and between the TDHCA Lender and Borrower to be recorded in the Records (the **"LURA"**), the TDHCA Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the TDHCA Mortgage loan.
- (c) **"City Loan Default"** means a default by Borrower in performing or observing any of the terms, covenants or conditions in the City Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the City Loan Documents for curing the default.
- (d) **"City Loan Documents"** means the subordinate promissory note dated ■ by Borrower made payable to the City Lender in the original principal amount of \$■, and any replacement thereof (the **"City Note"**), that certain regulatory agreement dated _____, executed by and between the City Lender and Borrower to be recorded in the Records (the **"Regulatory Agreement"**), the City Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the City Mortgage loan.
- (e) **"Shared Proceeds Agreement"** means the agreement between City Lender and TDHCA Lender of even date herewith, attached hereto as **Addendum "A"** and incorporated herein by reference for all purposes.

3. Subordination.

- (a) TDHCA Lender and the City Lender agree that the indebtedness evidenced by the City Loan Documents, with exception of the Regulatory Agreement, is and shall be subordinated to the extent and in the manner provided in this Agreement (including the Shared Proceeds Agreement).

With a copy to:

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Real Estate

To TDHCA Lender :

Texas Department of Housing and Community Affairs
221 11th Street, Austin, Texas 78701
P.O. Box 13941
Austin, Texas 78711-3941
Attn: Director of Multifamily Finance
with copy to Attn: Director of Multifamily Asset
Management

To Borrower:

■
Attn: ■

The parties may change their addresses for purposes of notice by giving the other party ten (10) days' written notice of the address change in the manner hereinabove stated.

7. Miscellaneous.

- (a) This Agreement, including all referenced exhibits and addendums, constitutes the entire agreement of the three parties hereto with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements. Any amendment hereto must be in writing executed by the Borrower, TDHCA Lender and the City Lender.
- (b) In the event of a conflict between this Agreement and the Shared Proceeds Agreement, the Shared Proceeds Agreement shall control.
- (c) Time is of the essence in the performance of the parties' obligations hereunder.
- (d) This Agreement is governed by the laws of the State of Texas.
- (e) This Agreement shall be enforceable by and binding upon all successors and assigns of TDHCA Lender.
- (f) This Agreement shall remain in full force and effect until the TDHCA Note has been fully and finally paid and Borrower has no further obligations under the TDHCA Loan Documents.
- (g) This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one counterpart be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto to be effective as of the date first above written.

CITY LENDER:

CITY OF HOUSTON, a Texas home-rule municipality

By: _____
Name: _____
Title: _____

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this _____ day of _____, 20█, by _____, duly authorized officer or representative of **CITY OF HOUSTON**, a Texas home-rule municipality, on behalf of said municipality.

[SEAL]

Notary Public, State of Texas

TDHCA LENDER:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**, a public and official
agency of the State of Texas

By: _____
Name: _____
Its duly authorized officer or representative

**THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §**

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this _____ day of _____,
20____, by _____, duly authorized officer or representative of **TEXAS
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency
of the State of Texas, on behalf of said agency.

[SEAL]

Notary Public, State of Texas

EXHIBIT "A"

Legal Description

ADDENDUM "A"

SHARED PROCEEDS AGREEMENT

This Shared Proceeds Agreement ("Agreement") is made by and among the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas ("TDHCA Lender"), City of Houston, a Texas home-rule municipality ("City Lender"), and ■, a ■ ("Borrower").

WHEREAS the City Lender and TDHCA Lender entered into that certain Subordination Agreement dated even herewith regarding encumbrance of the Property, as such term is defined in the Subordination Agreement ("Property"); and

WHEREAS the City Lender is the owner and holder of a third lien promissory note in the amount of \$■ ("City Lender Loan") executed by Borrower and made payable to City Lender, dated on or about even date herewith, secured by a ■ [Fee Deed of Trust, Assignment of Rents and Security Agreement and Leasehold Deed of Trust, Assignment of Rents and Security Agreement] (collectively, "City Lender Deed of Trust") to ■ [Keith W. Bynam, trustee] for City Lender, executed by Borrower and ■, respectively, and to be recorded in the Official Public Records of ■ County, Texas ("Records"), encumbering Property located in ■, Texas; and

WHEREAS, Borrower has applied to the TDHCA Lender, for a loan in the amount of \$_____ ("TDHCA Lender Loan") to be secured by a second lien deed of trust ("TDHCA Lender Deed of Trust") to _____, trustee for the TDHCA Lender, on the Property, which said second lien deed of trust is to be filed for record in the Records; and

WHEREAS, the parties wish to clarify their agreement with respect to sharing lien priority on all collateral proceeds including any proceeds from a foreclosure sale of the Property; and

WHEREAS, the loan to be made to the Borrower by the TDHCA Lender will be secured by a second lien on the Property owned by Borrower and the TDHCA Lender desires that its second lien in the Property share in priority on a proportionate, co-equal basis with the third lien deed of trust lien in the Property held by the City Lender; and

WHEREAS, the parties wish to clarify their agreement with respect to foreclosure of their respective liens on the collateral (including the Property) and the sharing of the proceeds, if any, from the liquidation of collateral including proceeds received from a foreclosure sale or subsequent sale after foreclosure.

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

1. Definitions. The following terms used in this Agreement shall have the following meanings, unless the context indicates otherwise:

(a) "Collateral" includes all property securing the repayment of the Loans including the Property, rents, deposit accounts (including reserve accounts, revenue accounts, etc.), and security deposits.

(b) "Collection" or "Collections" includes any proceeds received by Lenders from the disposition of Collateral including any excess proceeds received from a foreclosure sale of a superior lien lender, any proceeds received from a foreclosure sale by TDHCA Lender or a subsequent sale by a Lender after foreclosure, and Collateral when in the form of monies. Monies received by a Lender by way of offset or setoff are not a Collection. Any proceeds from a foreclosure sale that exceed the total amounts due on both the TDHCA Loan and City Loan, will be distributed to subordinate lienholders by the foreclosure trustee in accordance with Texas foreclosure law and such proceeds are not a Collection.

(b) "Lenders" means City Lender and TDHCA Lender collectively. "Lender" means City Lender or TDHCA Lender individually.

(c) "Loan Documents" means with respect to any of the Lenders those agreements, instruments and documents evidencing the terms of the Loan including, but not limited to, the City Lender Deed of Trust, the TDHCA Lender Deed of Trust, the promissory note(s) and any other agreement or instrument in writing which secure the repayment of the Loan(s) or which evidence the obligations of Borrower in connection with the Loan(s) as those agreements are thereafter amended, modified, renewed or extended from time to time.

(d) "Loan" or "Loans" includes the City Lender Loan and the TDHCA Lender Loan which are evidenced by promissory note(s) and all other promissory note(s) or other instruments relating thereto as may be executed subsequent to the date of this Agreement by Borrower to amend, modify, renew or extend such Loan(s).

2. Notice and Consultation Required. Unless prior written notice has been given by one Lender to the other in the manner and to the addresses specified in Section 3 of this Agreement and the Lenders have consulted with each other in accordance with Section 6 of this Agreement, Lenders will not:

(a) declare the Loan Documents to be in default;

(b) accelerate the Loan secured by the Loan Documents;

(c) commence the foreclosure of the Loan Documents pursuant to a power of sale, if any, contained in said Loan Documents or by way of a judicial foreclosure;

(e) sell, transfer or otherwise dispose of the Loan and Loan Documents; and/or

(f) reamortize, modify, restructure, renew or extend the terms, conditions, or provisions of the Loan and/or the Loan Documents.

3. Notice. Any notice required under this Agreement will be mailed to the Lenders by certified mail and will be delivered to the Lenders not less than thirty (30) calendar days prior to the intended action. Said notice will be addressed to and delivered to the Lenders as follows:

(a) If to TDHCA Lender:

Texas Department of Housing and Community Affairs
Attn: Director of Multifamily Finance Division
221 11th Street, Austin, Texas 78701
P.O. Box 13941
Austin, Texas 78711-3941

with copy to:

Texas Department of Housing and Community Affairs
Attn: Multifamily Asset Management Division
221 11th Street, Austin, Texas 78701
P.O. Box 13941
Austin, Texas 78711-3941

(b) If to City Lender:

City of Houston
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

with copy to:

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Real Estate

(c) If to Borrower:

4. Notice of Default.

(a) If a default occurs in the payment of any of the Loans, the affected Lender shall give the other Lender written notice of such default. Said notice shall be mailed to the Lender in the

manner and to the addresses specified in Section 3 of this Agreement and within thirty (30) days of the occurrence of such default.

(b) This notice of default is a separate notice from the declaration of default described in Section 2(a).

(c) If the default is cured after the written notice of default is given under this Section, the affected Lender shall give the other Lender written notice of such cure in the same manner as the written notice of default was given.

5. Cross Default. Any default by Borrower under a Lender's Loan and any related Loan Documents shall automatically create a default under the other Lender's Loan and related Loan Documents.

6. Consultation Among Lenders.

(a) In the event of a default by Borrower, the Lenders agree to discuss that event of default and the consequences the event of default may have on Borrower.

(b) Lenders will also consult with each other before either one takes any of the actions described in Section 2.

(c) Lenders will consult with each other before either one makes an advance for the preservation or protection of the Property or for Collection expenses. In addition, Lenders will comply with the requirements of Section 12.

(d) Any discussion or consultation between both Lenders under this Agreement will involve authorized officials of the Lenders and may occur in a face-to-face meeting, by telephone or by a video conference. The discussions and consultations will be confirmed in writing prior to any action being taken. The written confirmation may be in the form of a letter, memorandum or email.

7. Remedies. In the event of a default under a Lender's Loan Documents, the other Lender may, at its option upon consultation and upon providing notice to the other Lender:

(a) Cure any non-monetary default and provide evidence of such cure to the Lender;

(b) Cure any monetary default and pay the amount of the Borrower's delinquent payments to the Lender; or

(c) Pay the defaulting Loan in full following an acceleration of the Loan.

8. Sale, Transfer and Purchase of Loan. In the event Lender elects to sell, transfer or otherwise dispose of the Loan and Loan Documents and after providing notice to the other Lender of this intended action and upon consultation with each other, as required by this

Agreement, the other Lender may, at its option, purchase or payoff said Loan in accordance with the following:

(a) The other Lender shall have the first and prior right to purchase or pay off the Loan and Loan Documents.

(b) The other Lender will advise Lender of its election in writing within thirty (30) calendar days following the receipt of the notice of the Lender's intended action or notice of default.

(c) Within ten (10) calendar days of receipt of the other Lender's election, Lender will provide the other Lender with Loan information in accordance with Section 14 of this Agreement.

(d) Within thirty (30) calendar days of receipt of the complete Loan information, the other Lender may purchase or payoff said Loan in full.

(e) When the Loan is purchased, the selling Lender will endorse its note to the other Lender, without recourse, assign its Loan Documents to the other Lender, and deliver the endorsed note and assignment to the other Lender at the address identified in Section 3 of this Agreement.

(f) When the Loan is paid in full, Lender will mark its note or other evidence of the Loan "paid in full", file a release of its lien of record and deliver the note and the recorded release to the other Lender at the address identified in Section 3 of this Agreement.

(g) If Lender fails to adhere to the requirements in this Section 8 to exercise its rights under to purchase or pay off the Loan, the other Lender is released from all obligations under this Section 8.

9. Sharing of Collections.

(a) Each Lender agrees that, notwithstanding the order of attachment, filing, recording or other perfection, or the non-perfection of or the priority of, any liens securing either of the Lenders' Loans, and notwithstanding any provision of any of the Loan Documents to the contrary, any Collections received by either Lender upon the foreclosure of the Property shall be shared on a parity prorated basis according to the advanced comparative outstanding balances due to City Lender and to TDHCA Lender from Borrower and as determined in the Formula for Proportionate Sharing provided in Section 10.

(b) All Collections, if any, will be divided using the Formula for Proportionate Sharing provided in Section 10 after the payment of any advances as provided in Section 12.

10. Formula for Proportionate Sharing; Division and Delivery. Subject to the payment of advances as provided in Section 12, all Collections to be divided between City Lender and TDHCA Lender pursuant to this Agreement will be divided using the City Lender's and the TDHCA Lender's respective percentage multiplier.

(a) The City Lender's and the TDHCA Lender's respective percentage multiplier is computed as follows:

(1) For the City Lender's percentage multiplier, the numerator is the amount then owing under the City Lender's Loan and the denominator is the sum of the amount then owing under both the City Lender's Loan and the TDHCA Lender's Loan, and

(2) For the TDHCA Lender's percentage multiplier, the numerator is the amount then owing under the TDHCA Lender's Loan and the denominator is the sum of the amount then owing under both the City Lender's Loan and the TDHCA Lender's Loan.

The respective multipliers will be rounded up to the nearest tenth of a point. The sum of the City Lender's percentage multiplier and the TDHCA Lender's percentage multiplier should total 100%.

(b) Following receipt by a Lender of a Collection, the Lenders' respective percentage multipliers shall be determined as of the date the Collection is to be divided.

(1) The total amount of the Collection to be divided will be multiplied by each Lender's respective percentage multiplier. The respective products of those calculations will then be delivered to each respective Lender to be applied to that Lender's Loans.

(2) Division and delivery will occur within 30 calendar days of receipt of a Collection by either Lender. Provided, however, the Lender receiving the Collection to be divided may ask the other Lender for additional time to divide and deliver the Collection but any such request for additional time will be made within the 30-calendar-day period.

(3) When a share of a Collection is delivered to a Lender under this section, the share of the Collection being delivered will be accompanied by an accounting prepared by the Lender which received, divided and delivered the Collection. The accounting will identify the Collection and its source, show how the respective percentage multipliers were calculated and how the respective shares of the Collection received were computed.

11. Receipt of Monies in Excess of Proportionate Share.

(a) Except as otherwise provided in this Section, each Lender agrees not to demand, sue for, take or receive, directly or indirectly, in cash or other property or in any other manner, any Collection in excess of the Lender's pro-rata share of Collections as determined in accordance with this Agreement.

(b) Any Collection received by a Lender contrary to the provisions herein shall be received in trust for the benefit of the other Lender, shall be segregated from other funds and property held by the Lender and shall be delivered to the other Lender within 30 calendar days of receipt by the Lender who is holding such Collection in trust under this provision. Provided, however, the Lender receiving the Collection to be segregated and delivered may ask the other

Lender for additional time to deliver the Collection but any such request for additional time will be made within the 30-calendar-day period.

(c) Monies received by a Lender by way of offset or setoff are exempt from the requirements of this Section and will not be shared with the other Lender.

12. Advances.

(a) If the Loan Documents secure the repayment of future advances, Lender will make no advances for any purpose without the prior written consent of the other Lender.

(b) Notwithstanding the formula for apportioning Collections between the Lenders as contained in Section 10 of this Agreement, advances made by the City Lender or TDHCA Lender for the mutual benefit or protection of both Lenders, which are agreed to by both Lenders as provided in Section 12(a) and which are charged to Borrower's account shall be paid first before the apportionment of funds between City Lender and Lender. Such advances may include advances to protect or preserve the Property, to pay ad valorem taxes or Property insurance, and to pay Collection and/or foreclosure expenses (such as attorney fees, advertising and sale costs, lien searches and title examinations and Property appraisal fees).

(c) For all advances made by a Lender which will be paid first as provided in Section 12(b), the Lender will provide an accounting to the other Lender. The accounting will include an itemized list of each advance made, the date of the advance, the purpose of the advance, and the payee of the advance and the supporting documentation including the invoice or billing for the charge and the Lender's payment of that advance item.

13. Foreclosure and Disposition of Property. In the event a Lender elects to sell, transfer or otherwise dispose of the Property and after providing notice to the other Lender of this intended action and after consultation as required by Sections 2 and 6 of this Agreement, Lender shall comply with the following:

(a) If a Lender elects to initiate a judicial foreclosure proceeding against the Property under a court judgment, Lender will name the other Lender as a defendant in the judicial action and allege that Lenders share a lien priority on all collateral proceeds on the Property and other Collateral pursuant to this Agreement.

(1) Proceeds received from the sale or disposition of the Collateral (including the Property) shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement after the payment of any advances as provided in Section 12.

(2) Sale proceeds in excess of court costs, advances, sale expenses and the respective unpaid balances of all Loans are excess sale proceeds for the purposes of this Section 13(a) and not a Collection. Excess sale proceeds shall be disbursed in accordance with the judgment or order of the court.

(b) If TDHCA Lender elects to foreclose its superior lien and initiate a non-judicial foreclosure proceeding against the Property under a power of sale conferred by a deed of trust pursuant to Section 51.002 of the Texas Property Code lien as a superior lien on the Property-

(1) The proceeds of the foreclosure sale received from a third party buyer shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement after the payment of any advances under Section 12.

(2) TDHCA Lender will not be required to bid more than the amount owed on the TDHCA Lender Loan or Loans which are secured by the TDHCA Lender's senior lien being foreclosed.

(3) Sale proceeds in excess of advances, sale expenses and the respective unpaid balances of all Loans are excess sale proceeds for the purposes of this Section 13(b). Said excess sale proceeds shall be disbursed in accordance with the provisions of the deed of trust which was foreclosed and in accordance with Texas law.

(4) City Lender's subordinate lien will be extinguished by the foreclosure sale in accordance with Texas law.

(5) If the foreclosing TDHCA Lender obtains title to the Property at the foreclosure sale, TDHCA Lender will take title to the Property free and clear of City Lender's subordinate lien and all subordinate liens will be extinguished.

(6) Upon any subsequent sale of the Property to a third party buyer and after Lenders have mutually agreed in writing to the sale price, the proceeds of the sale shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement (after the payment of any advances under Section 12).

(c) If City Lender elects to foreclose its subordinate lien and initiate a non-judicial foreclosure proceeding against the Property under a power of sale conferred by a deed of trust pursuant to Section 51.002 of the Texas Property Code lien as a subordinate lien on the Property-

(1) Title to the Property, upon foreclosure of the City Lender's subordinate lien, will be taken subject to the TDHCA Lender's senior lien.

(2) The TDHCA Lender's senior lien will not be extinguished by the foreclosure.

(3) If the foreclosing City Lender obtains title to the Property at the foreclosure sale, City Lender will take title to the Property subject to the TDHCA Lender's senior lien.

(4) Upon any subsequent sale of the Property by City Lender to a third party buyer, and after Lenders have mutually agreed in writing to the sale price, the proceeds of the sale shall be shared by Lenders in accordance with the Formula for Proportionate Sharing provided in Section 10 of this Agreement (after the payment of any advances under Section 12) and the TDHCA Lender's senior lien shall be released.

(d) No Lender may accept a voluntary conveyance of the Property or a deed in lieu of foreclosure for the Property without the prior written consent of the other Lender.

14. Request for Loan Information. Upon written request by a Lender and within ten (10) calendar days of receipt of the request, the other Lender will provide the requesting Lender with the following information:

(a) current unpaid balance of the Loan and an itemized description of each component of the unpaid balance including unpaid principal, accrued interest and advances, fees and charges, if any;

(b) the amount of the delinquency, if any, on the Loan;

(c) amortization schedule for payments on the Loan;

(d) information as to the status of insurance and/or ad valorem taxes;

(e) copies of any current insurance policies covering the Property; and

(f) information pertaining to Borrower's defaults under the Loan and/or Loan Documents.

15. No Detriment. Lenders agree that the lien position of City Lender shall be subordinate to the lien position of the TDHCA Lender prior to the initiation of a foreclosure action; however, neither the City Lender nor the TDHCA Lender shall have the right to foreclose or otherwise enforce its interest and security to the detriment or exclusion of the other.

16. Servicing. No Lender shall perform any servicing function on behalf of another Lender with respect to another Lender's Loan unless the parties enter into an express written Agreement providing for the performance of such servicing functions.

17. Term; Binding Effect. This Agreement shall remain in full force and effect until the Loans have been paid in full, and shall be binding on each party's successors and assigns.

18. Conflicts between Loan Documents and this Agreement. If there are any conflicts between the provisions in this Agreement and the Loan Documents regarding the identity of the Loans secured by the Loan Documents, any provision for making advances or the disposition or distribution of Collections, the provisions of this Agreement shall control. However, subject to the foregoing sentence, nothing in this Agreement shall otherwise supersede or override any other provision contained in the Lenders' Loan Documents.

19. Conflicts between Subordination Agreement and this Agreement. If there are any conflicts between the provisions in this Agreement and the provisions in the Subordination Agreement, this Agreement shall control.

20. Termination. This Agreement will terminate when the Loan or Loans of either Lender are paid in full.

[Signatures on following pages]

EXECUTED AND DELIVERED THIS ____ day of _____, 20■.

CITY LENDER:

CITY OF HOUSTON, a Texas home-rule
municipality _____

By: _____, a
_____, its

By: _____

Name: _____

Title: _____

Date: _____

TDHCA LENDER:

TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS, a public and official agency of
the State of Texas

By: _____

Name: _____

Title: Duly Authorized Officer or Representative

Date: _____

BORROWER APPROVAL AND CONSENT:

The Borrower consents to the provisions of this Agreement and approves this Agreement.

BORROWER:

_____, a

By: _____, a
_____, its

By: _____
Name: _____
Title: _____
Date: _____

_____, a
_____, its

By: _____
Name: _____
Title: _____
Date: _____

Attachment J

RESERVED

**ATTACHMENT K
TO LOAN AGREEMENT**

ASSIGNMENT OF PROPERTY MANAGEMENT AGREEMENT

ASSIGNMENT OF PROPERTY MANAGEMENT AGREEMENT

THIS ASSIGNMENT OF PROPERTY MANAGEMENT AGREEMENT (this "**Assignment**") is made as of _____, 20____ by and among **HOUSTON DMA HOUSING II, LLC**, a Texas limited liability company ("**Owner**"), and _____, a _____, having an address at _____ Houston, Texas ("**Manager**").

RECITALS

A. Owner is the owner of the real property located at 2077 South Gessner Road, Houston, TX 77063 ("**Site**") and is making certain improvements to the Site.

B. Owner has requested that the City of Houston, Texas ("**City**") make a loan of \$12,000,000.00 ("**Loan**") to Owner to provide funds for the construction of a 128-unit family senior affordable housing project ("**Project**").

C. The Loan will be (i) advanced pursuant to the terms of a certain Loan Agreement dated as of the date hereof between City and Owner (as the same may be amended from time to time, the "**Loan Agreement**"); and (ii) secured by a Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") covering the Project.

D. Manager is the property manager of the Project pursuant to that certain Property Management Agreement dated as of _____ 20____ between Owner and Manager (as from time to time amended in accordance with the terms thereof and hereof, the "**Management Agreement**").

E. City has required, as a condition to making the Loan and as additional security for the obligations of Owner under the Loan, (i) that Owner assign to City all of Owner's right, title and interest in and to the Management Agreement; (ii) that Owner and Manager subordinate, to the extent herein provided, their respective right, title and interest in and to the Management Agreement to the liens and security interests securing performance of the Loan; and (iii) that Owner and Manager agree to the terms, covenants and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Terms.** Terms defined in the Loan Agreement have the same meanings when used herein unless otherwise defined herein or the context hereof otherwise requires.

2. **Assignment.** Subject to the terms and conditions hereof, to further secure the performance of the obligations under the Loan Agreement and documents executed in connection with or securing the Loan Agreement ("**Loan Documents**"), Owner hereby collaterally grants, transfers and assigns to City all of Owner's right, title and interest in, to and under the Management Agreement together with all right, power and authority of Owner to alter, modify or change the terms of the Management Agreement or to surrender, cancel or terminate the same, and Manager consents to such assignment pursuant to and in accordance with the agreements set forth herein. So long as no Default exists under the Loan Agreement or any of the Loan Documents, Owner shall have the license to perform under and receive performance under the Management Agreement. Neither this Assignment nor any action taken by City under or pursuant to this Assignment shall be deemed to impose any obligation or liability upon City to Manager under or with respect to the Management Agreement or any covenants of Owner thereunder; except that from and after the date upon which City (a) agrees in writing to assume performance of Owner's obligations under the terms of the Management Agreement, or (b) acquires title to the Project by foreclosure or otherwise, Manager shall be entitled to the management fees and other sums provided in the Management Agreement which are due and payable after acquisition of the Project by City so long as Manager is performing its duties thereunder.

3. **Representations and Warranties.** Owner and Manager hereby represent and warrant to City that as of the date hereof (a) the only agreement affecting the management of the Project (as more particularly set forth in the Management Agreement) is the Management Agreement, (b) the Management Agreement constitutes the full agreement between Owner and Manager, and there are no amendments thereto, (c) the Management Agreement is in full force and effect, and (c) neither Owner nor Manager is in default under the Management Agreement, and no event has occurred which, with the giving of notice and/or the passage of time would constitute a default thereunder. Owner represents and warrants that but for this Assignment and the other Loan Documents and pursuant to the Senior Loan Documents (as defined by the Loan Agreement) if any, Owner has not transferred, assigned or encumbered, in whole or in part, the Management Agreement or any of Owner's rights or interests thereunder. Owner further represents that Owner has not performed any act or executed any instrument which might prevent or limit City from proceeding under any of the terms and conditions hereof.

4. **Covenants.**

(a) Owner, at its sole cost and expense, shall fully perform every obligation under the Management Agreement by Owner to be performed, and shall enforce or secure the performance of every obligation of the Management Agreement by Manager to be performed for or on behalf of Owner (unless in Owner's good faith, prudent business judgment, it would not be in the best interest of the Project to do so and such obligation is not material). Owner shall not waive or release Manager from Manager's obligations to be performed under the Management Agreement. Owner shall not enter into any agreement other than the Management Agreement for the management of the Project. Except pursuant to the Senior Loan Documents (if any), Owner will not transfer, assign or encumber, in whole or in part, the Management Agreement or any of Owner's rights or interests thereunder. Any violation of any of such covenants on the part of Owner without the prior written consent of City shall constitute a Default entitling City to exercise the remedies available to it hereunder and under the Loan Documents.

(b) Owner and Manager shall not modify or amend, in any material respect, or terminate, the Management Agreement without City's prior written consent; *provided*, however, that in the event City is given written notice of Owner's default and opportunity to cure in accordance with the first sentence of Section 5 below and such default is not cured by Owner or City within the applicable time period, Manager shall be permitted (subject to the third sentence of Section 7) to terminate the Management Agreement in accordance with the provisions thereof.

(c) Owner and Manager hereby agree that notwithstanding any provision to the contrary set forth herein or in the Management Agreement, Manager shall not receive any management fee in excess of five percent (5.0%) of gross annual income at any time.

(d) At Owner's sole cost and expense, Owner shall appear in and defend any action or proceeding connected with the Management Agreement and shall pay all necessary costs and expenses of City, including reasonable attorneys' fees, in any such action or proceeding in which City may appear.

5. **Default by Owner Under Management Agreement.** In the event of any material default by Owner under the Management Agreement, Manager shall give City written notice of such default, and City shall be permitted an opportunity (not less than forty-five (45) days from receipt of said notice) to cure such default by Owner, during which time Manager shall have no right to terminate the Management Agreement; *provided*, however, that City shall in no event be required to effect any such cure, and any cure by City shall not release Owner or Manager from any of its obligations under the Management Agreement. City shall have the right to appear in and defend any action or proceeding purporting to affect the Project or the rights and powers of City hereunder. Owner agrees to protect, defend, indemnify and hold City harmless from and against any and all losses, damages, claims, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees) incurred in connection with any such actions or measures taken by City or otherwise incurred in the exercise of any other rights or remedies of City under this Assignment. Owner agrees that all sums so expended by City in curing any default by

Owner, or in appearing in or defending any action or proceeding, or in taking any other action permitted hereby, in each case together with interest thereon at the Default Rate (as defined in the Loan Agreement) shall payable by Owner upon demand and shall be added to any obligations owing by Owner under the Loan Agreement and shall be secured by the Deed of Trust, Collateral Assignment and any other security held for the Loan.

6. **No Duty to Perform; Indemnity.** City shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Management Agreement, or under or by reason of this Assignment, and Owner shall and does hereby indemnify and hold City harmless against and from any and all liability, loss or damage arising or occurring prior to foreclosure which City may or might incur under the Management Agreement or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Management Agreement, except as a result of or in connection with the gross negligence or willful misconduct of City. Should City incur any such liability, loss or damage under the Management Agreement or under or by reason of this Assignment, or in the defense of any such claims or demands, except as a result of or in connection with the gross negligence or willful misconduct of City, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by the Loan Documents, and Owner shall reimburse City therefor immediately upon demand, and upon the failure of Owner to do so, same shall constitute a Default and City may, upon thirty (30) days notice to Owner, if the amounts properly due and owing to City have not been paid, exercise the remedies available to it under the Loan Documents.

7. **Subordination.** Manager hereby subordinates any and all right, title and interest it may now or in the future have in the Management Agreement and/or to receive payment of any management or other fees set forth therein to the liens and security interests securing the obligations under the Loan Agreement; *provided*, however, that until the occurrence of a Default, Owner shall be entitled to pay, and Manager shall be entitled to receive, the management fee in accordance with the terms of the Management Agreement. Further, Manager agrees that any and all liens, rights, and interest owned, claimed, or held by it, in and to the Project, are and shall be in all respects subordinate to the lien and security interest created by the Deed of Trust. In the event of any sale of the Project pursuant to foreclosure of the Deed of Trust, or a deed in lieu of foreclosure, Manager agrees that it will not exercise any rights it may have to terminate the Management Agreement by reason of such sale. Notwithstanding the foregoing, Manager agrees that such foreclosure or deed in lieu of foreclosure shall operate to cut off, extinguish, and otherwise terminate all liens that Manager, and those claiming by, through, or under Manager, may now or hereafter have in and to the Project, and Manager agrees that City or any purchaser at a foreclosure sale under Deed of Trust lien may terminate the Management Agreement upon foreclosure or at any time thereafter.

8. **Default.** Upon the occurrence of a Default under the Loan Agreement or other Loan Documents or the occurrence of a default on the part of Owner hereunder or under the Management Agreement, then, without regard for the adequacy of the security for the Loan, City shall have the right (but not the obligation) to: (a) take possession of the Project and exercise and enjoy all right, title and interest of Owner under the Management Agreement; (b) whether or not possession of the Project is taken, to receive all funds, issues, and profits under the Management Agreement (other than management fee payable to and earned by Manager in accordance with the terms and provisions thereof) and apply the same, less costs and expenses of taking possession of the Project, operation and collection, including reasonable attorneys' fees, upon any obligations due under the Loan Documents whether or not then due and in such order as City may determine; (c) enforce or terminate (with or without cause) the Management Agreement; (d) require Owner to install substitute management acceptable to City; and (e) do any acts which City deems proper to protect the Project or City's security interest therein or lien thereon, and thereupon and without further notice to Owner, Owner shall not have any further rights under the Management Agreement which would conflict with, impair, or interfere with any rights of City hereunder. Neither City's entering upon and taking possession of the Project nor the exercise of any of

the aforesaid remedies shall cure or waive any such default on the part of Owner or waive, modify or affect any notice of default under the Loan Agreement or invalidate any act done pursuant to such notice. Any exercise by City of the right to terminate the Management Agreement shall be without liability to City for payment of any fees, charges or otherwise, notwithstanding any provisions in the Management Agreement to the contrary. After any such termination, City shall have the right to replace Manager with a manager selected by City in its sole discretion. Upon any termination of the Management Agreement, whether or not pursuant to this section, Manager agrees to deliver copies of all records, files, financial statements, and any other documents pertaining to management, construction, design and operation of the Project which are in the possession or under the control of Manager to Owner excluding, however, documents pertaining solely to the operation systems or procedures owned by Manager. Notwithstanding the foregoing, the City's right to replace the Manager to a manager selected by the City shall be subject to the rights of Senior Lender under its Assignment of Management Agreement and Subordination of Management Fees.

9. **Notice by City.** A notice in writing by City to Manager advising Manager that a Default exists and requesting that all future performance under the Management Agreement be made to City (or its agent), shall be construed by Manager as conclusive authority to Manager that such performance is to be made to City (or its agent) and Manager shall be fully protected in making such performance to City; and Owner hereby irrevocably constitutes and appoints City the attorney-in-fact and agent of Owner for the purpose of endorsing the consent of Owner on any such notice. The foregoing power is coupled with an interest and shall survive the liquidation, bankruptcy or insolvency of Owner.

10. **Attornment by Manager.** Manager hereby agrees that in the event of notification to Manager by City that City has acquired possession of the Project or obtained the appointment of a receiver for same, Manager shall, at City's request, attorn to City as owner thereunder; *provided*, however, that in no event shall City be liable for, or be obligated to cure, any default of Owner occurring prior to the date of such notification.

11. **No Limitations.** Owner and Manager agree that (a) nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted to City under any of the Loan Documents, and (b) an action to foreclose may be commenced, notwithstanding that Owner continues in possession of the Project, both real and personal, herein referred to, and continues to collect the rents, issues and profits thereof.

12. **No Waiver.** This Assignment can be extended, modified or amended only in writing executed by Manager and Owner and consented to by the City, and none of the rights or benefits of City can be waived permanently except in a written document executed by City. City's rights, powers, privileges and remedies under or in connection with this Assignment are cumulative and not exclusive and shall not be waived, precluded or limited by any failure or delay in the exercise thereof or by the parties exercise thereof or by any course of dealing between Manager and/or Owner and City. No notice to or demand on Manager or Owner in any case shall entitle Manager or Owner to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of City to any other or further action in any circumstances without notice or demand.

13. **Counterparts.** This Assignment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed, including by transmission of facsimile, in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. In the event this Assignment or any amendment, waiver, consent or supplement shall have been executed by transmission of facsimile, any party may request that the parties thereto execute original documents for record purposes, but no failure of any party to do so shall invalidate or in any other way affect the validity of such document. This Assignment shall become effective upon the

execution of a counterpart hereof by each of the parties hereto and receipt by the parties of written or telephonic notification of such execution and authorization of delivery thereof.

14. **Descriptive Headings; Recitals.** The descriptive headings used in this Assignment are for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof. The Recitals set forth at the beginning of this Assignment are hereby incorporated into the substantive provisions of this Assignment.

15. **Notices.** Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder shall be given in conformity with the terms and conditions of the Loan Agreement and to the parties hereto at the addresses set forth above.

16. **Benefit of Agreement.** This Assignment shall be binding upon each party hereto and its successors and assigns, and shall inure to the benefit of Owner, City, and Manager and their respective successors and/or assigns, except the rights and remedies of Owner, City, and Manager under this Assignment shall not inure to the benefit of (a) any purchaser of the Project at a foreclosure sale, (b) any Person taking title to the Project by deed in lieu of foreclosure, or (c) any successor or assign of any Person described in clauses (a) and (b) above, except that Owner's, City's, and Manager's rights shall inure to the benefit of the parties described in clauses (a), (b) and (c) hereof if such parties are City (including, for these purposes, its successors and assigns as holder of the Loan Documents), and any participant's or any of City's (or such successors, assigns, beneficiaries or participant's) affiliates or nominees.

17. **Inconsistencies.** In the event of any inconsistency between the terms and conditions hereof and the terms of the Management Agreement, the terms and conditions set forth herein shall govern.

18. **Severability.** In the event that any of the covenants, agreements, terms or provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

19. **Further Assurances.** At any time, and from time to time, upon City's request, Owner and Manager shall make, execute and deliver, or cause to be made, executed and delivered, to City and, where appropriate, shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled, at such time and in such offices and places as shall be deemed desirable by City, such documents and/or instruments as City may consider necessary or desirable in order to effectuate, or to continue and preserve, the obligations of Owner and Manager under this Assignment. Upon any failure by either Owner or Manager to do so, City may make, execute, record, file, re-record or refile any and all such documents and/or instruments for and in the name of either Owner or Manager, and Owner and Manager hereby irrevocably appoint (which appointment is coupled with an interest with full power of substitution) City the agent and attorney-in-fact of either Owner or Manager to do so; and Owner and Manager shall reimburse City, on demand, for all costs and expenses (including reasonable attorneys' fees and expenses) incurred by City in connection therewith.

20. **Choice of Law and Venue.** **THIS ASSIGNMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS AND SHALL BE PERFORMABLE IN HARRIS COUNTY, TEXAS.**

21. **WAIVER OF JURY TRIAL.** THE PARTIES TO THIS ASSIGNMENT HEREBY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR ARISING OUT OF, OR IN ANY WAY RELATING TO THIS ASSIGNMENT.

**SIGNATURE PAGE
COLLATERAL ASSIGNMENT
OF PROPERTY MANAGEMENT CONTRACT**

IN WITNESS WHEREOF, each of the parties hereto has executed and delivered this Assignment or has caused the same to be executed and delivered by its duly authorized representative as of the date first above written.

The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature.

OWNER:

**Houston DMA Housing II, LLC,
a Texas limited liability company**

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

MANAGER:

By: _____
Name: _____
Title: _____

**ATTACHMENT L
TO LOAN AGREEMENT**

**ASSIGNMENT OF ARCHITECT'S
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

**ASSIGNMENT OF ARCHITECT'S
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

FOR VALUE RECEIVED, Houston DMA Housing II, LLC, a Texas limited liability company ("**Borrower**"), whose mailing address is: 404101 Parkstone Heights Drive, Suite 310, Austin, TX 78746, as additional security for its obligations incurred pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the "**City Loan Agreement**"), between the Borrower and **THE CITY OF HOUSTON** ("**City**"), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of \$12,000,000.00 ("**City Loan**"), the proceeds of which were utilized by Borrower for the construction of the 128-unit family senior affordable housing project located at 2077 South Gessner Road, Houston, Harris County, Texas ("**Project**") and which Deed of Trust on the Project were executed for the benefit of the City, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of Borrower in and to that certain architect contract by and between Borrower and _____ ("**Architect**"), dated _____ ("**Contract**") and in and to those certain architectural drawings and plans and specifications ("**Plans and Specifications**") therefor, all inclusive, all of which were prepared by Architect, a true and correct copy of the Contract and Plans and Specifications having been deposited with and held by City. Upon the satisfaction in full of the obligations of Borrower to City evidenced by the City Loan Agreement and the Restrictive Covenants and other documents executed in connection therewith ("**City Loan Documents**"), this Assignment of Architect's Contract, Plans and Specifications, and Consent ("**Assignment**") shall become null and void.

Borrower and Architect, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Borrower's obligations or duties concerning the Contract and Plans and Specifications, including, but not limited to, the obligation to pay for the preparation of the Contract and Plans and Specifications, until and unless City shall exercise its rights, granted hereby, to the use of the Contract and Plans and Specifications.

Borrower hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Borrower's rights with respect to the Contract and Plans and Specifications, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of City with the same force and effect as Borrower could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), Borrower hereby represents and warrants to City that no previous assignment of its interest in the Contract and Plans and Specifications has been made; and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract and Plans and Specifications so long as this Assignment is in effect.

Capitalized terms utilized herein which are not defined herein shall have the meaning specified in the City Loan Agreement.

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Signature Page

Assignment of Architect's Contracts, Plans and Specifications and Consent

The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature.

DATED to be effective as of _____, 20__.

BORROWER:

**Houston DMA Housing II, LLC,
a Texas limited liability company**

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

[ARCHITECT'S CONSENT FOLLOWS]

CONSENT OF ARCHITECT

The undersigned ("**Architect**") represents to City that (i) to the best of Architect's knowledge, the Plans and Specifications are the plans and specifications to be used in the actual construction of the Project; (ii) Architect, or all applicable principals or agents of Architect, are duly licensed to perform, conduct and engage in such activities and business as are contemplated under the Contract in the jurisdiction or jurisdictions where such activities, business or work is to be performed and in which the Project is, or will be, located or constructed; (iii) the Project has been designed, as evidenced by the Plans, in accordance with all applicable architectural barriers law including, without limitation, the Americans With Disabilities Act (42 U.S.C. §§ 12131-12165; 47 U.S.C. §§ 155, 201, 218 and 255), The Architectural Barriers Act of 1968 (42. U.S.C. §§ 415-4157), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) and Tex. Gov't Code Ann. § 469.001 et seq., as amended, ordinances, rules and regulations, and that all permits, certificates or other licenses evidencing same have been obtained and will be delivered to City upon request therefore; and (iv) the Contract is in full force and effect and is valid, binding and enforceable against Architect in accordance with its terms and there is no default by Architect thereunder.

Architect hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any default by Borrower under the City Loan Agreement or any City Loan Document executed pursuant thereto, City is authorized to use the Contract and Plans and Specifications for the purpose of the inspection or completion of the construction of the Project and for the maintenance and protection of the Project contemplated by the City Loan Agreement.

To induce City to enter into the City Loan Agreement with Borrower, Architect hereby agrees that all of the liens which Architect may have or be entitled to either against such Contract and Plans and Specifications or against the Project contemplated by the City Loan Agreement (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deed of Trust and other liens and security interests securing the performance of the City Loan.

Architect acknowledges that City is relying and is entitled to rely on Architect's professional skill and competence in the provision of construction management services under the Contract.

The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature.

DATED to be effective as of _____, 20____.

ARCHITECT:

By: _____
Name: _____
Title: _____

Exhibit List

Exhibit A - Legal Description

**EXHIBIT A
LEGAL DESCRIPTION**

*THE LEGAL DESCRIPTION WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.

ATTACHMENT M
TO LOAN AGREEMENT

**ASSIGNMENT OF CONSTRUCTION
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

**ASSIGNMENT OF CONSTRUCTION
CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT**

FOR VALUE RECEIVED, **Houston DMA Housing II, LLC**, a Texas limited liability company ("**Borrower**"), whose mailing address is: 404101 Parkstone Heights Drive, Suite 310, Austin, TX 78746, as additional security for its obligations incurred pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the "**City Loan Agreement**"), between the Borrower and **THE CITY OF HOUSTON** ("**City**"), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of \$12,000,000.00 ("**City Loan**"), the proceeds of which were utilized by Borrower for the construction of a 128-unit family senior affordable housing development located at 2077 South Gessner Road, Houston, Harris County, Texas ("**Project**") and which Deed of Trust on the Project was executed for the benefit of the City, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of Borrower in and to (i) that certain construction contract by and between Borrower and _____ ("**Contractor**"), dated _____ ("**Contract**"), and (ii) that certain Primary Subcontract between Contractor and **DMA Development Company, LLC**, a Texas limited liability company ("**Primary Subcontractor**") (collectively the "**Contract**"), true and correct copies of the Contract having been deposited with and held by City. Upon the payment and satisfaction in full of the obligations of Borrower to City evidenced by the City Loan and the loan documents executed in connection with or securing the City Loan ("**City Loan Documents**") and upon delivery of written confirmation by City of such payment and satisfaction, this Assignment of Construction Contract, and Consent ("**Assignment**") shall become null and void.

Borrower, Contractor and Primary Subcontractor, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Borrower's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract.

Borrower hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Borrower's rights with respect to the Contract to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of City with the same force and effect as Borrower could do if this Assignment had not been made.

Contractor and Primary Subcontractor hereby irrevocably constitute and appoint City as their respective attorneys-in-fact to demand, receive and enforce Contractor's and Primary Subcontractor's respective rights with respect to the Contract to give appropriate receipts, releases and satisfactions for and on behalf of Contractor or Primary Subcontractor, as applicable, and to do any and all acts in the name of Contractor or Primary Subcontractor, as the case may be, in the name of City with the same force and effect as Contractor or Primary Subcontractor could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), Borrower hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

Capitalized terms utilized herein which are not defined herein shall have the meaning specified in the City Loan Agreement.

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Signature Page

Assignment of Construction Contract and Consent

DATED to be effective as of _____, 20____.

BORROWER:

**Houston DMA Housing II, LLC,
a Texas limited liability company**

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

[CONTRACTOR'S CONSENT FOLLOWS]

CONSENT OF CONTRACTOR

The undersigned ("**Contractor**") represents to **THE CITY OF HOUSTON** ("**City**") that the Contract (as defined in that certain Assignment of Construction Contract and Consent ("**Assignment**") which immediately precedes this Consent of Contractor (this "**Consent**") is the contract to be used in the actual construction and completion of the work for the Project; and Contractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by Borrower under the City Loan Agreement or any document or instrument executed pursuant thereto, City is authorized to use the Contract for the purpose of completing construction work for the Project contemplated by the City Loan Agreement.

Contractor acknowledges that City is relying and is entitled to rely on Contractor's professional skill and competence in the provision of construction services under the Contract. To induce City to enter into the City Loan Agreement and the other City Loan Documents with Borrower, Contractor hereby agrees that all of the liens which Contractor may have or be entitled to either against such Contract or against the Project contemplated by the City Loan Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deed of Trust and liens and security interests of the liens and security interests securing the payment of the loan or loans to be made pursuant to the Loan Documents.

DATED to be effective as of _____, 20__.

CONTRACTOR:

By: _____

Name: _____

Title: _____

CONSENT OF PRIMARY SUBCONTRACTOR

The undersigned ("**Primary Subcontractor**") represents to **THE CITY OF HOUSTON ("City")** that the Contract (as defined in that certain Assignment of Construction Contract and Consent ("**Assignment**") which precedes this Consent of Primary Subcontractor (this "**Consent**") is the contract to be used in the actual construction and completion of the work for the Project; and Primary Subcontractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by Borrower under the City Loan Agreement or any document or instrument executed pursuant thereto, City is authorized to use the Contract for the purpose of completing construction work for the Project contemplated by the City Loan Agreement.

Primary Subcontractor acknowledges that City is relying and is entitled to rely on Primary Subcontractor's professional skill and competence in the provision of construction services under the Contract. To induce City to enter into the City Loan Agreement and the other City Loan Documents with Borrower, Primary Subcontractor hereby agrees that all of the liens which Primary Subcontractor may have or be entitled to either against such Contract or against the Project contemplated by the City Loan Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deed of Trust and liens and security interests of the liens and security interests securing the payment of the loan or loans to be made pursuant to the Loan Documents.

DATED to be effective as of _____, 20__.

PRIMARY SUBCONTRACTOR:

DMA DEVELOPMENT COMPANY, LLC

By: _____

Name: _____

Title: _____

Exhibit List

Exhibit A - Legal Description

**EXHIBIT A
LEGAL DESCRIPTION**

*THE LEGAL DESCRIPTION WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.

ATTACHMENT N
TO LOAN AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

This ENVIRONMENTAL INDEMNITY AGREEMENT ("**Environmental Indemnity Agreement**") is executed effective as of _____, 20____, by **Houston DMA Housing II, LLC**, a Texas limited liability company ("**Borrower**" or "**Indemnitor**") for the benefit of **THE CITY OF HOUSTON** ("**Lender**").

W I T N E S S E T H:

WHEREAS, Lender is making a loan ("**Loan**") to Borrower in the original principal amount of TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00) and further evidenced by that certain Loan Agreement entered into by and between Lender and Borrower ("**Loan Agreement**"), secured, inter alia, by that certain Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") which Borrower has executed and delivered to Keith Bynam, as Trustee ("**Trustee**"), for the benefit of Borrower and collaterally assigned to Lender, covering certain real property ("**Land**") described in Exhibit "A" attached hereto, together with the improvements, buildings, facilities located thereon and certain personal property described in the Deed of Trust (the Land, together with said improvements, buildings, facilities and personal property referred to herein as the "**Property**"). The Loan Agreement, the Deed of Trust, this Environmental Indemnity Agreement and all other documents or instruments evidencing, securing or pertaining to the Loan shall be collectively referred to as the "**Loan Documents**"; and

WHEREAS, as a material inducement in order for Lender to make the Loan to Indemnitor, Indemnitor has agreed to execute and deliver this Environmental Indemnity Agreement to and for the benefit of Lender.

NOW, THEREFORE, for and in consideration of the making of the Loan by Lender to Indemnitor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Indemnitor hereby agrees as follows:

A G R E E M E N T:

Article I. **DEFINITIONS**

The following terms shall have the defined meanings ascribed to such terms, as set forth below:

"**Environmental Laws**" shall mean any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; Resource, Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("**CWA**"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("**CAA**"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. § 1251 et seq.; any related federal laws and authorities as required by the Housing and Community Development Act of 1974, as listed in 24 CFR § 58 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("**TWC**") § 26.001 et seq.; Texas Health & Safety Code ("**THSC**") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

"Environmental Report" means the Phase I environmental report delivered to Lender in connection with the Loan.

"Hazardous Substances" shall mean any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(9) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(13) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

"Hazardous Substances Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Substances, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Substances at any time (whether before or after the date of the Note) emanating from the Property.

Article II. REPRESENTATIONS AND WARRANTIES

Except as set forth in the Environmental Report, Indemnitor unconditionally represents and warrants to Lender as follows:

(a) The Property does not contain any Hazardous Substances, and the Property is not subject to any Hazardous Substances Contamination.

(b) The Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any governmental authority or any Environmental Laws.

(c) All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of any Hazardous Substances into the environment, have been duly obtained or filed.

(d) Neither Indemnitor nor, to the best knowledge of Indemnitor, any other person, including, but not limited to, any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, under, from or about the Property of any Hazardous Substances or the transportation to or from the Property of any Hazardous Substances.

(e) To Indemnitor's knowledge, no property adjoining the Property is or has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Substances, nor, to Indemnitor's knowledge, is any other property adjoining the Property affected by Hazardous Substances Contamination.

(f) Neither Indemnitor nor, to the best knowledge of Indemnitor, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal of any Hazardous Substances on, under, from or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Indemnitor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

(g) To Indemnitor's knowledge, no inquiry, investigation, administrative order, consent order and agreement, litigation or settlement is proposed, threatened, anticipated or in existence with respect to any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property. Indemnitor has not received any notice, and has no actual or constructive knowledge, that any governmental authority has determined, or threatens to determine, or is investigating any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property.

(h) Indemnitor has taken all steps reasonably necessary to determine that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Property.

Article III. COVENANTS

Indemnitor unconditionally covenants that and agrees with Lender as follows:

(a) Indemnitor will not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, under, from or about the Property or transport to or from the Property any Hazardous Substances or allow any other person or entity to do so. Notwithstanding the foregoing or anything to the contrary set forth in this Environmental Indemnity Agreement, reasonable quantities of Hazardous Substances as are customarily used in the construction, habitation, maintenance and/or operation of an apartment project, properly used and/or stored, shall be permitted (collectively, the "**Permitted Substances**").

(b) Indemnitor will keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law.

(c) Indemnitor will establish and maintain, at Indemnitor's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Property, by any and all owners or operators, including tenants, of the Property, which system shall include annual reviews of such compliance by employees or agents of Indemnitor who are familiar with the requirements of the Environmental Laws and, at the request of Lender no more than once each year, a detailed review of such compliance of the environmental condition of the Property (the "**Environmental Report**") in scope satisfactory to Lender by an environmental consulting firm approved in advance by Lender; provided, however, that if any Environmental Report indicates any violation of any Environmental Laws or a need for remedial work ("**Remedial Work**"), such system shall include at the request of Lender a detailed review of the status of such violation (a "**Supplemental Report**") by such environmental consultant. Indemnitor shall furnish an Environmental Report or such Supplemental Report to the Lender within sixty (60) days after Lender so requests, together with such additional information as Lender may reasonably request.

(d) Indemnitor will give prompt written notices to Lender of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substances on, under, from or about the Property, the migration thereof from or to other property, the disposal, storage, or treatment of any Hazardous Substances generated or used on, under or about the Property, (ii) all claims made or threatened by any third party against Indemnitor or the Property or any other owner or operator, including a tenant, of the Property relating to any loss or injury resulting from any Hazardous Substances, and (iii) Indemnitor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any investigation or cleanup of the Property pursuant to any Environmental Laws.

(e) Indemnitor will permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Laws or Hazardous Substances, and Indemnitor shall pay all attorneys' fees incurred by Lender in connection therewith.

(f) In the event that any Remedial Work is reasonably necessary or desirable, Indemnitor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Lender for performance thereof (or such shorter period of time as may be required under any Environmental Laws). All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Indemnitor including, without limitation, Lender's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Indemnitor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured by the Deed of Trust ("**Indebtedness**") and shall be payable to Lender upon demand.

Article IV. DEFAULT

The term "**Default**", as used herein, shall mean the occurrence at any time and from time to time, of any one or more of the following:

(a) If either Indemnitor or Lender acquires knowledge or receives notice that Hazardous Substances or Hazardous Substances Contamination exists in, on, about or under any of the Property, other than Permitted Substances, and Indemnitor fails, within thirty (30) days after acquisition of such knowledge or of such notice, to commence and thereafter diligently prosecute to completion any necessary remedial actions in compliance with Environmental Laws.

(b) If any representation or warranty contained herein shall be false or misleading, or erroneous in any material respect and, to the extent capable of being cured, such representation is not cured within thirty (30) days of written notice.

Article V. REMEDIES

If a Default shall occur, Lender may, at Lender's sole election and by or through Trustee or otherwise, exercise any or all of the following:

(a) Declare all unpaid amounts under the Note and any other unpaid portion of the Indebtedness immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by Indemnitor), whereupon the same shall become immediately due and payable.

(b) Exercise any and all other rights, remedies and recourses granted under the Loan Documents or as may be now or hereafter existing in equity or at law, by virtue of statute or otherwise,

including actions for damages and specific performance.

Article VI. SITE ASSESSMENTS

If Lender shall ever have reason to believe that there are Hazardous Substances or Hazardous Substances Contamination affecting any of the Property, Lender (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "**Site Reviewers**") to perform environmental site assessments ("**Site Assessments**") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any state, federal or local law, rule or regulation relating to Hazardous Substances. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Indemnitor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of any Hazardous Substances on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Indemnitor will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lender shall make the results of such Site Assessments fully available to Indemnitor, which (prior to a Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Indemnitor upon demand of Lender and any such obligations shall be Indebtedness secured by the Deed of Trust.

Article VII. INDEMNIFICATION

REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, INDEMNITOR SHALL JOINTLY AND SEVERALLY PROTECT, INDEMNIFY, AND HOLD HARMLESS TRUSTEE AND LENDER, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER, ABOUT OR FROM THE PROPERTY OTHER THAN PERMITTED SUBSTANCES, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF AND REGARDLESS OF WHETHER OR NOT CAUSED BY, OR WITHIN THE CONTROL OF INDEMNITOR, INCLUDING WITHOUT LIMITATION (I) DAMAGES FOR PERSONAL INJURY, OR INJURY TO PROPERTY OR NATURAL RESOURCES OCCURRING UPON OR OFF THE PROPERTY, FORESEEABLE OR UNFORESEEABLE, INCLUDING, WITHOUT LIMITATION, THE COST OF DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS ON THE REAL PROPERTY, INTEREST AND PENALTIES; (II) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS INCLUDING FEES INCURRED FOR ATTORNEYS, CONSULTANTS, CONTRACTORS, EXPERTS AND LABORATORIES; AND (III) LIABILITY TO ANY THIRD PERSON OR ANY GOVERNMENTAL AUTHORITY TO INDEMNIFY SUCH PERSON OR GOVERNMENTAL AUTHORITY FOR COST EXPENDED IN CONNECTION WITH THE ITEMS REFERENCED IN SUBPARAGRAPH (II) IMMEDIATELY ABOVE. THIS COVENANT AND THE INDEMNITY CONTAINED HEREIN SHALL SURVIVE THE RELEASE OF THE LIEN OF THE DEED OF TRUST, OR THE EXTINGUISHMENT OF THE LIEN OF THE DEED OF TRUST BY FORECLOSURE OR ACTION IN LIEU THEREOF AND SHALL CONTINUE IN EFFECT SO LONG AS A VALID CLAIM MAY BE LAWFULLY ASSERTED AGAINST LENDER. NOTWITHSTANDING THE FOREGOING, THE

INDEMNIFICATION SHALL NOT APPLY TO CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE INDEMNIFIED PARTIES.

Article VIII. LENDER'S RIGHT TO REMOVE HAZARDOUS MATERIALS

Lender shall have the right but not the obligation, without in any way limiting Lender's other rights and remedies under the Loan Documents, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substances or Hazardous Substances Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Substances or Hazardous Substances Contamination pertaining to the Property or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property or other action and/or which, in Lender's reasonable opinion, could jeopardize Lender's security under the Loan Documents; provided, however, Lender shall have no right to proceed with any of the rights granted to it in this paragraph until Lender has provided Indemnitor with written notice of Lender's intent to take any of the actions described in this paragraph and Indemnitor fails to commence within thirty (30) days following Indemnitor's receipt of such notice and diligently proceeds thereafter to complete all action necessary to clean-up, remove or resolve any of the foregoing. All reasonable costs and expenses paid or incurred by Lender in the exercise of any such rights shall be included in the indebtedness secured by the Loan Documents and shall be payable by Indemnitor upon demand.

Article IX. MISCELLANEOUS

This Environmental Indemnity Agreement is joint, several and unconditional and shall not be subject to any exculpation, non-recourse or other limitation of liability provisions in the Loan Documents, and Indemnitor acknowledges that its obligations under this Environmental Indemnity Agreement are not limited by such exculpation, non-recourse or similar limitation of liability provisions in the Loan Documents (if any).

Those costs, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) for which Lender is indemnified hereunder shall be reimbursable to Lender after being paid by Lender, and Indemnitor shall pay such costs, expenses, damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) to Lender within ten (10) days after notice from Lender itemizing the amounts paid to the date of such notice. In addition to any remedy available for failure to periodically pay such amounts, such amounts shall thereafter bear interest at the Default Rate (as defined in the Note) of interest specified in the Loan Documents. Payment by Lender shall not be a condition precedent to the obligations of Indemnitor under this Environmental Indemnity Agreement.

Any notice, communication, request or other documents or demand permitted or required hereunder shall be in writing and given in accordance with the provisions of the Loan Documents.

THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN TEXAS PROVIDED, HOWEVER, THAT EITHER FEDERAL LAW OR, TO THE EXTENT FEDERAL LAW DOES NOT APPLY, THE LAW OF THE SITUS OF THE PROPERTY SHALL BE APPLIED TO DETERMINE THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS. PROVIDED FURTHER, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED SHALL APPLY TO THE CREATION, PERFECTION, AND PRIORITY OF LIENS AND SECURITY INTERESTS AND TO ANY FORECLOSURE, TRUSTEE'S SALE, APPOINTMENT OF RECEIVER OR OTHER REMEDY WITH RESPECT TO THE PROPERTY. ANY PROCEDURES PROVIDED HEREIN FOR SUCH REMEDIES SHALL BE MODIFIED BY AND REPLACED WITH, WHERE INCONSISTENT WITH OR REQUIRED BY, ANY PROCEDURES OR REQUIREMENTS OF THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

ANY LEGAL ACTION TO INTERPRET OR ENFORCE ANY TERM OR CONDITION OF THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN THE TEXAS STATE COURTS SITUATED IN THE CITY OF HOUSTON AND COUNTY OF HARRIS, TEXAS. BY EXECUTING THIS ENVIRONMENTAL INDEMNITY AGREEMENT, INDEMNITOR EXPRESSLY (A) CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF SUCH TEXAS AND FEDERAL COURTS, (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT HARRIS COUNTY, TEXAS IS NOT A PROPER OR CONVENIENT VENUE OR FORUM, AND (C) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

Indemnitor waives any acceptance of this Environmental Indemnity Agreement by Lender.

The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party, nor excuse any of the parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Environmental Indemnity Agreement is subject to enforcement at law and/or equity, including actions for damages and/or specific performance.

Time is of the essence in the performance of the terms, conditions and covenants herein contained.

This Environmental Indemnity Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive any exercise of any remedy by Lender under the Loan Documents, including foreclosure of the liens of the Loan Documents (or deed in lieu thereof), even if, as part of such foreclosure or deed in lieu of foreclosure, the Loan amount is satisfied in full.

All terms not defined in this Environmental Indemnity Agreement shall have the same meanings as given them in the Loan Documents.

[SIGNATURE PAGE FOLLOWS]

Signature Page

Environmental Indemnity Agreement

The parties agree that each party may sign and deliver this agreement electronically or by electronic means and that an electronic signature will be as good, binding, and effective as an original or manual signature.

EXECUTED to be effective as of the date first set forth above.

INDEMNITOR:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

**EXHIBIT A
LEGAL DESCRIPTION**

*THE LEGAL DESCRIPTION WILL BE FINALIZED AND INCORPORATED PRIOR TO FINANCIAL CLOSING WITH THE PRIOR WRITTEN CONSENT OF THE DIRECTOR.

**ATTACHMENT O
TO LOAN AGREEMENT**

FORM OF BONDS

Project No.

ONE YEAR MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as Principal, hereinafter called "**Contractor**", and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to HOUSTON DMA HOUSING II, LLC, a Texas limited liability company ("**Obligee**"), in the sum of _____ Dollars (\$ _____) for the payment of which sum to be made to the Obligee and its successors, Contractor and Surety do bind themselves, their successors and assigns jointly and severally. The conditions of this obligation are such that:

WHEREAS, the Contractor has entered into that certain construction contract with the Obligee, dated of even date herewith, for the construction of a one hundred forty-five (145) unit family senior affordable housing development located at 2077 South Gessner Road, Houston, Harris County, Texas ("**Contract**"), with all of such work to be done in accordance with the documents executed in connection with the Contract (collectively, the "**Contract Documents**"), and referred to in the loan agreement dated of approximate even date herewith between the City of Houston and Obligee which was adopted by the City Council of the City of Houston.

NOW THEREFORE, if the Contractor shall comply with the provisions of the general conditions of that certain construction contract by and between Contractor and Obligee, dated as of _____, and correct work which is not in accordance with the Contract Documents discovered within the established one (1) year period, then this obligation shall become null and void and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

IN WITNESS THEREOF, the Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached their current Power of Attorney.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

(Contractor)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

**THE FOREGOING BOND IS ACCEPTED ON
BEHALF OF THE OWNER:**

HOUSTON DMA HOUSING II, LLC

By: _____

Name: _____

Title: _____

Date: _____

**TEXAS STATUTORY PAYMENT BOND
(Property Code - Private Work)**

[NOTE: Penalty of this bond must be 100% of Contract amount. This bond and copy or memorandum of the construction contract must be filed with County Clerk of County where owner's property is located.]

KNOW ALL MEN BY THESE PRESENTS:

That, _____, the original contractor (hereinafter called the "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____ and duly authorized and admitted to do business in, and licensed to execute surety bonds by, the State of Texas (hereinafter called the "Surety"), as Surety, are held and firmly bound unto HOUSTON DMA HOUSING II, LLC (hereinafter called the "Owner"), as Owner, in the amount of _____ Dollars (\$ _____) for the payment whereof the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 20____, to construct a 145-unit family senior affordable housing development, to be located on the land described in Exhibit "A" attached hereto (hereinafter called the "Contract"), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length hereto, and a copy of said Contract (but without the plans, specifications and general conditions of said Contract) or a memorandum of the Contract is attached hereto as Exhibit "B".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal shall well and faithfully make prompt payment to each and every claimant for labor, subcontracts, materials, and specially fabricated materials performed or furnished under or by virtue of said contract and duly authorized normal and usual extras thereto (not to exceed 15% of said contract price), then this obligation shall be void; otherwise to remain in full force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Sections 53.001, *et seq.* of the Texas Property Code, as amended.

PROVIDED, HOWEVER, that the Owner having required the said Principal to furnish this bond in order to comply with the provisions of Sections 53.201 *et seq.* of the Texas Property Code, as currently amended, all rights and remedies under this bond shall be determined in accordance with the provisions, conditions, and limitations of said statute to the same extent as if it were copied at length herein.

Any notices of claims under this Bond should be sent to:

_____ Insurance Company
[Mailing & Physical Address] _____

Telephone No. for Claims: _____ - _____ - _____

STATEMENT: The address of the Surety to which any notices of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number maintained by the Texas Department of Insurance as follows:

Texas Department of Insurance
Toll free Telephone Number: 800-252-3439

[The undersigned Surety hereby certifies that it currently holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law.]

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument, this _____ day of _____, 20____.

PRINCIPAL:

_____,
a _____

By: _____ (Seal)
Name: _____
Title: _____

SURETY:

_____,
a _____

By: _____
Name: _____
Title: _____

[Attach Power of Attorney for Surety's Attorney-in-Fact.]

The foregoing bond is hereby approved.

OWNER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit "A" – Land Description
Exhibit "B" – Contract of Memorandum

Document ____

PERFORMANCE BOND

THAT WE, _____, as Principal, (the "Contractor"), and the other subscriber hereto, _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston (the "City"), a municipal corporation, and Houston DMA Housing, LLC, a Texas limited liability company (individually, "Owner" and collectively with the City, the "Obligees"), in the penal sum of \$ _____ for the payment of which sum, well and truly to be made to Obligees, their successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with Owner for the construction of a 145-unit family senior affordable housing development located at 2077 South Gessner Road, Houston, Harris County, Texas, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that Obligees may suffer in consequence thereof, as more fully set forth herein.

It is further understood and agreed that the Surety does hereby relieve the Obligees or their representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that Owner will retain certain amounts due the Contractor until the expiration of 30 days from the acceptance of the Work is intended for the Obligee's benefit, and the Obligees will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the Obligees or their representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the Obligees from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the Obligee/s gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the Obligees, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the Obligees shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS WHEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

By: _____
Name:
Title:

Name of Contractor

By: _____
Name:
Title:
Date:

ATTEST/SURETY WITNESS:

(SEAL)

By: _____
Name:
Title:
Date:

Full Name of Surety

Address of Surety for Notice

Telephone Number of Surety

By: _____
Name:
Title: Attorney-in-Fact
Date:

Attachment P

RESERVED

2022-0534
4600017316

Prepared by, and after recording
return to:
Polsinelli, PC
201 E. Las Olas Blvd., Suite 2250B
Ft. Lauderdale, FL 33301
Attention: Shawn Whitney

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 6-15-2020)

Loan Number: _____
Property Name: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 6-15-2020)

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into this ___ day of _____, 20__, by and between (i) Legacy Bank & Trust Company, a Missouri chartered bank ("**Senior Lender**") and (ii) City of Houston, a Texas home-rule municipality ("**Subordinate Lender**" or "**City**").

RECITALS

- A. Houston DMA Housing II, LLC, a Texas limited liability company ("**Borrower**") is the owner of certain land located in Harris County, **Texas**, described in Exhibit A ("**Land**"). The Land is improved with a multifamily rental housing project ("**Improvements**").
- B. Senior Lender has made or is making a loan to Borrower in the original principal amount of \$6,500,000.00 ("**Senior Loan**") upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of _____ between Senior Lender and Borrower ("**Senior Loan Agreement**") in connection with the Mortgaged Property. The Senior Loan is secured by a Multifamily Deed of Trust dated as of the date of the Senior Loan Agreement ("**Senior Mortgage**") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "**Mortgaged Property**."
- C. Pursuant to a Loan Agreement dated _____ between City and Borrower ("**City Loan Agreement**"), City has made or is making a loan to Sponsor in the original principal amount of \$12,000,000.00 ("**City Loan**"), that is or will be secured by a Deed of Trust, Security Agreement and Financing Statement dated _____ ("**Subordinate Mortgage**") encumbering all or a portion of the Borrower's interest in the fee estate.
- D. The Senior Mortgage will be recorded in the Official Public Records of Harris County, Texas ("**Recording Office**"). The Subordinate Mortgage will be recorded in the Recording Office following the recording of the Senior Mortgage.
- E. The execution and delivery of this Agreement is a condition of Senior Lender's making of the Senior Loan.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings:

The terms “**Condemnation**,” “**Imposition Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender if Senior Lender acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“**Enforcement Action Notice**” means a Notice given from Subordinate Lender to Senior Lender following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“**Lien**” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“**Notice**” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“**Regulatory Agreement**” means the Restrictive Covenants between Borrower and City dated _____, _____ and to be recorded in the Recording Office.

“**Senior Indebtedness**” means the “Indebtedness” as defined in the Senior Loan Agreement.

“**Senior Lender**” means the “Lender” as defined in the Senior Mortgage. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“**Senior Loan Documents**” means the “Loan Documents” as defined in the Senior Loan Agreement, as such documents may be amended.

“**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Agreement.

“**Senior Note**” means the promissory note or other evidence of the Senior Indebtedness and any replacement of the Senior Note.

“**Subordinate Indebtedness**” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“**Subordinate Lender**” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“**Subordinate Loan Documents**” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“**Subordinate Mortgage**” means the Subordinate Mortgage as defined in the recitals.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (a) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Deposits.
- (b) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender’s Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$12,000,000.00.
 - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times, except as provided in Section 3(f) hereof, continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Senior Loan Default. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date.
- (d) Payments After Senior Loan Default or Bankruptcy.
 - (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.
 - (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.

- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.
- (f) Priority of Regulatory Agreement. Senior Lender and Subordinate Lender hereby agree that, notwithstanding anything to the contrary set forth elsewhere herein, the Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of the Borrower relating to maintenance, tenant lease provisions, income, rent or affordability restrictions contained in the Regulatory Agreement and, following a foreclosure under the Senior Mortgage, or the acceptance by Senior Lender of a deed to the Mortgaged Property in lieu of such a foreclosure (each, a "Foreclosure Action"), the Regulatory Agreement shall survive and the successor owner of the Mortgaged Property shall acquire the Mortgaged Property subject to all of the terms and conditions of the Regulatory Agreement, except as otherwise expressly provided below:
1. No successor owner shall be obligated under the Regulatory Agreement to make any payment under, or to otherwise comply with, any of the other Subordinate Loan Documents;
 2. The Foreclosure Action and the transfer of the Mortgaged Property pursuant to the Foreclosure Action will not violate the limitations on transfers in the Regulatory Agreement or require the approval of the Subordinate Lender. Neither the successor owner initially acquiring title to the Mortgaged Property as a result of a Foreclosure Action, nor its immediate successor in interest, shall be subject to any of the limitations upon creation of indebtedness nor creation of any lien securing indebtedness set forth in the Regulatory Agreement; provided that any subsequent mortgagee or lienholder with respect to such indebtedness shall agree that in the event of foreclosure or deed in lieu of foreclosure, the transferee under such foreclosure agrees that it will take subject to the Regulatory Agreement; and provided further that all other subsequent encumbrances shall be subject to Subordinate Lender's approval under the Regulatory Agreement. Any sale, assignment or transfer of the Mortgaged Property following a transfer pursuant to a Foreclosure Action shall be subject to Subordinate Lender's rights under the Regulatory Agreement to approve such transfer, except that

Subordinate Lender agrees that its decision to approve any such sale, assignment or other transfer will be based solely upon whether the proposed transferee is qualified to manage and operate affordable housing projects similar to the Mortgaged Property, and the Subordinate Lender will not unreasonably withhold, delay or condition its consent to any such proposed transfer;

3. No successor owner would be obligated to pay, or otherwise have any liability for or in connection with, any claim by Subordinate Lender for liquidated damages, for indemnification or for damages in connection with any breach of any term or provision of the Regulatory Agreement first occurring prior to the date upon which such successor owner acquired title to the Mortgaged Property;
4. No successor owner shall be required to cure any default under the Regulatory Agreement first occurring prior to the date upon which such successor owner acquired title to the Mortgaged Property, except that each successor owner shall be required to cure continuing defaults under the Regulatory Agreement related to the Mortgaged Property; provided further, however, that each such successor owner shall have 120 days after the date upon which it acquires title to the Mortgaged Property to cure such continuing defaults, or, if any such continuing default is not reasonably susceptible to a cure by such owner within such period, to commence curing such default (and in such latter case, such owner shall thereafter continuously and diligently pursue the cure of such default to completion);
5. All reserve requirements imposed by the Regulatory Agreement shall, after any Foreclosure Action, be deemed satisfied so long as comparable reserves are established and held by the applicable successor owner's lenders; and
6. The Subordinate Lender, after a Foreclosure Action, shall not unreasonably withhold, delay or condition any consent or approval contemplated by the Regulatory Agreement.

4. Default Under Subordinate Loan Documents.

(a) Notice of Subordinate Loan Default and Cure Rights.

- (i) Subordinate Lender will deliver to Senior Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.

- (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
 - (A) Discontinues its pursuit of any cure.
 - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
- (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
- (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
- (ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).

- (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
- (iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
- (iv) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

- (a) Notice of Senior Loan Default and Cure Rights.
 - (i) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
 - (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.

- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:
 - (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines.
- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice

to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:

- (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
- (B) Modify or amend in any respect any provision of the Senior Loan Documents.
- (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. **Conflicts.** If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. **Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**

- (a) Insurance.
 - (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender.
 - (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender.
 - (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate

Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
 - (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
 - (iii) If Senior Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
 - (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon

Senior Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.

- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter except release or modification of the Regulatory Agreement, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (h) Certification. Within 10 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. **Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
9. **Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
10. **Notices.**

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

Legacy Bank & Trust Company
3250 E. Sunshine
Springfield, MO 65804
Attention: Eric Leonard

With a copy to:

Polsinelli, PC
201 E. Las Olas Blvd., Suite 2250B
Ft. Lauderdale, FL 33301
Attention: Shawn Whitney

Notices intended for Subordinate Lender will be addressed to:

City of Houston
c/o Department of Housing and Community Development

2100 Travis, 9th floor
Houston, TX 77002
Attention: Director

With copy to:

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: City Attorney

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application

of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
- (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender.
 - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
 - (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
 - (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 4(b)(iv), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

- (1) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

SUBORDINATE LENDER:

SEAL/ATTEST:

Pat Jefferson Daniel
Pat Jefferson Daniel, City Secretary

CITY OF HOUSTON, TEXAS

Sylvester Turner
Sylvester Turner, Mayor

APPROVED:

Keith W. Bynam
Keith W. Bynam, Director
Housing and Community Development
Department

COUNTERSIGNED:

Chris B. Brown
Chris B. Brown, Controller

APPROVED AS TO FORM:

[Signature]
Senior Assistant City Attorney
LD# 0292000914001

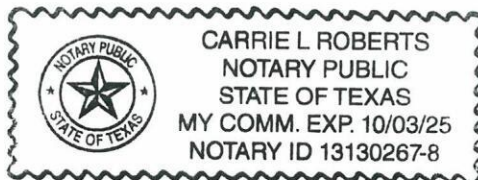
COUNTERSIGNATURE DATE:

12/14/2022

STATE OF TEXAS §

COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the 14th day of December, 2022, by Sylvester Turner for Sylvester Turner, Mayor of the CITY OF HOUSTON, a municipal corporation, on behalf of said corporation.



Carrie L. Roberts
Notary Public, State of Texas
Carrie L. Roberts
Printed Name of Notary
My commission expires: 10/3/25

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 20__, by and between **Legacy Bank & Trust Company** and **City of Houston** and consents to the agreement of the parties set forth in this Agreement.

BORROWER:

HOUSTON DMA HOUSING II, LLC,
a Texas limited liability company

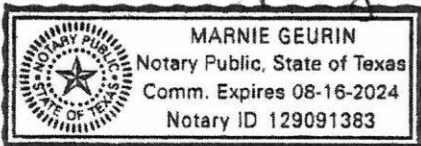
By: DMA Ella Grand, LLC,
a Texas limited liability company,
its managing member

By: _____
Name: Diana McIver
Title: Manager

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this 8 day of December, 2022 by Diana McIver the Manager of DMA Ella, a limited liability company, on behalf of such limited liability company.



Marnie Geurin
NOTARY PUBLIC - THE STATE OF
Marnie Geurin
Printed Name of Notary

My commission expires: 8/16/24.

EXHIBIT A
LEGAL DESCRIPTION