



CITY OF HOUSTON
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND
DELIVERY CORRESPONDENCE

**POSSIBLE DUPLICATE COPY DO NOT DUPLICATE SHIPMENT
OR SERVICE**

SERVICE RELEASE ORDER

Vendor Address
Vendor Address Number 106358
BUFFALO BAYOU PARTNERSHIP
1113 VINE STREET SUITE #200
HOUSTON TX 77002
USA

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

Information
SRO Number/Date 4500368867-0 / 05/03/2022
CoH Vendor Number 106358
Page 1 of 2
Buyer's Name Eric Espinal 462
Buyer's Telephone Number
Buyer's Fax Number
Buyer's E-mail Address

**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: 2022-0510

BUFFALO BAYOU PARTNERSHIP JOINED BY LOCKWOOD SOUTH APTS LP
LOAN AGREEMENT-COH HARVEY MULTIFAMILY PROGRAM-NEW CONSTRUCTION
OF LOCKWOOD SOUTH, AN 80 UNIT AFFORDABLE RENTAL; AT 733 N. DRENNA ST.

2022-0510 ORD PASSED 7/29/2022; AGMT
EXECUTED BY MAYOR 7/29/22; CS 7/29/22

Item	Quantity	UM	Material # / Description	Unit Cost	Extended Cost
10	1.00	AU	99884 REAL ESTATE (INCL. B Lockwood South Apt DR17 Release Order against contract 4600017087 Item 00020 05/03/2022 EE Amount: \$9,950,000.00 Lockwood South will be an 80-unit affordable rental development serving families. The property will provide a mix of one-bedroom, two-bedroom units serving low-to-moderate income households at 30%, 50%, 60% and 80% of Area Median Income.	9,950,000.00 / AU	9,950,000.00



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SERVICE RELEASE ORDER

PO number/date 4500368867 -0 / 05/03/2022 Page 2 of 2

Item	Quantity	UM	Material # / Description	Unit Cost	Extended Cost
	Gross Price		USD	1 AU	1.000 9,950,000.00
			9,950,000.00		
			*** Item partially delivered ***		
			Expected value of unplanned services: 9,950,000.00		
			Delivery Date: 11/30/2022		

Total **** USD **9,950,000.00**

2022-0510 ORD PASSED 7/29/2022; AGMT
EXECUTED BY MAYOR 7/29/22; CS 7/29/22

Amount: \$9,950,000.00

Lockwood South will be an 80-unit affordable rental development serving families. The property will provide a mix of one-bedroom, two-bedroom units serving low-to-moderate income households at 30%, 50%, 60% and 80% of Area Median Income.

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.

I hereby certify a certificate of the necessity of this expenditure is on file in this department.	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.
Mayor	Chief Procurement Officer
	Controller

4600017087 2022-0510

LOAN AGREEMENT

Dated Dec 21ST, 2022

By and between

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

and

THE BUFFALO BAYOU PARTNERSHIP, a Texas non-profit corporation

and

LOCKWOOD SOUTH APTS, LP
a Texas limited partnership

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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 **THE BUFFALO BAYOU PARTNERSHIP**, a Texas nonprofit corporation ("Borrower") and is joined herein by **LOCKWOOD SOUTH APTS, LP**, a Texas limited partnership ("Owner").

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, City and Owner hereby agree as follows:

SECTION ONE
BACKGROUND

A. Owner desires to develop that real property that is located at 733 N. Drennan Street, Houston, Harris County, Texas, 77003, with a 80-unit multifamily affordable housing development ("Project"). The Project will include a mix of one-, two-, and three-bedroom units that will be affordable to tenant households with incomes at 30, 50, 60, and 80 percent of area median income, or "AMI."

B. 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 NINE MILLION NINE HUNDRED FIFTY THOUSAND and No/100 Dollars (\$9,950,000.00) ("Loan Amount") ("City Loan" or the "City's Loan").

C. The City's Loan will provide funds for the rehabilitation, reconstruction, acquisition and/or construction of replacement 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").

D. 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 and Owner have 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.

E. The term of the City Loan and this Agreement shall commence on the Closing Date and shall mature on the last day of the Affordability Period (as same may be extended) ("Term"). Project Completion must occur within 24 months after the Closing Date.

F. Until Project Completion, 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) Available Cash Flow, as defined below. The annual interest payment or non-payment of such interest shall be accompanied by evidence acceptable to the Director documenting Net Cash Flow or absence of Net Cash Flow. Unpaid interest will accrue and will be payable from future Available Cash Flow. For purposes of this provision "Available Cash Flow" shall mean 50% of Net Cash Flow, and "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 without limitation any debt service payments related to the Senior Loan and the Subordinate Loan (but not any other subordinate loans except as provided in Item 13 below); (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) loan proceeds; (9) deposits made to Operating Reserves and to the Replacement 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 a limited partner to the extent such fee is authorized under the Approved Final Operating Budget and loans from a partner 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).

G. 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, Owner 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 Owner'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 (1.00%) 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 Owner. 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 cause Owner and Owner 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 (if applicable).

H. 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, the Collateral 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.

I. Upon the Maturity Date, if no Default has occurred that remains uncured, the amount of the City's Loan that remains unpaid, if any, shall be deemed paid. 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.

J. 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 Collateral Assignment (Owner Loan) in favor of the City and the Owner Loan Documents. In furtherance of the foregoing, Borrower and Owner shall execute and deliver any instruments, documents and/or agreements necessary to create or perfect the security interests referenced hereunder.

K. Borrower shall loan the proceeds of the City Loan to Owner pursuant to the Owner Loan Agreement which has been or will be approved by the Director, for the Owner Loan from Borrower to Owner. Owner shall use the proceeds of the Owner Loan for the payment of the costs to acquire and rehabilitate, reconstruct, construct or replace rental housing which shall be comprised of the Project. The Land on which the Project is located is described in Exhibit A attached to this Agreement. A 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.

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

M. To secure the City Loan, Borrower will collaterally assign the Owner Loan and the Owner Loan Documents pursuant to the Collateral Assignment (Owner Loan) executed by Borrower in favor of the City covering the Owner Loan, the Leasehold Deed of Trust, Security Agreement and Financing Statement executed by Owner covering the Project and the other Owner Loan Documents. Notwithstanding anything to the contrary in this Agreement, the Owner shall remain obligated to repay the Owner Loan to the holder thereof according to its terms and conditions until satisfied in full. To further secure the City Loan, Fee Owner shall execute in favor of the City a Fee Deed of Trust, Security Agreement and Financing Statement covering Fee Owner's interest in the Project.

N. 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 and Owner to submit information to the Director on various aspects of the Project. Borrower shall, and shall cause Owner to submit, and Owner 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 and/or Owner ("Monitoring Forms"), the initial form of which is attached as **APPENDIX 5** hereto.

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

P. Borrower and Owner shall comply and shall cause their 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 and Owner 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 34% of the Loan Amount to MWSBEs. Borrower and Owner acknowledge that they have reviewed the requirements for good faith efforts on file with the OBO and shall comply with them.

Q. Borrower and Owner shall ensure and shall cause their 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 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 (including without limitation the Director and City Controller), 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."

R. Borrower and Owner hereby agree to comply with all conditions required by the GLO as a condition of GLO's approval of the Project for fair housing and affirmatively further fair housing purposes. Additionally, Borrower and Owner shall implement the Affirmatively Furthering Fair Housing Requirements and the Authority to Use Grant Funds ("AUGF") issued in connection with the Project.

S. Borrower and Owner agree 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.

T. If the Loan Proceeds do not cover all of the costs of the Project, Owner shall have obtained at the time of Closing a firm commitment for the funding of the remaining acquisition costs (if applicable) and the 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, Owner shall be responsible for funding or obtaining funding for any costs or expenses of the Work, other Project cost under the

Final Project Budget or otherwise payable under this Agreement to the extent not covered by the Loan Proceeds.

U. 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. Borrower and Owner shall cause all contractors who work on the Project to implement the City Workforce Protection Measures in Appendix 15.

V. The replacement reserve ("Replacement Reserve") shall be no less than \$300.00 per unit annually, increasing by 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 6.24 of this Agreement. The City shall have a subordinate security interest in the Replacement Reserve, and Borrower and Owner shall execute any instruments or other documents necessary to create or perfect such interest if required by the Director.

W. 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.

X. Borrower and Owner have 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).

Y. 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 ("Schedule") setting forth definitions.

2. Appendices (“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 Owner’s contractors and subcontractors are subject;
- (b) insurance to be maintained by the Owner and also to be contained in the Approved Construction Contract and other Construction and Supply Contracts
- (c) Release and Indemnity provisions 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 Owner and 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) Appraisal Requirements including sample Agreement for Appraisal Services;
- (m) GLO Lien Waiver;

- (n) Minimum Property Standards; and
- (o) City Workforce Protection Measures.

3. Exhibits ("Exhibits"), setting forth:

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

4. Attachments ("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 or Owner as conditions precedent to the Closing of the City's Loan or to be executed by Borrower, Owner and the City at the Closing of the City's Loan.

Z. 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.

AA. The recitals and statements contained in this Section One shall be incorporated into this Agreement, and Borrower and Owner confirm, agree and acknowledge 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 and/or Owner, Borrower and Owner hereby covenant and agree to comply with the terms therewith. Borrower and Owner further agree to comply with all laws and other requirements contained in the Appendices.

SECTION TWO
REPRESENTATIONS AND WARRANTIES

Borrower and Owner, as the context requires, hereby represent and warrant, 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 (but only to the extent the City Loan has not been deemed repaid pursuant to the terms of this Agreement and/or the Note), as follows:

2.1. Ownership and Use of Land. Fee Owner holds or will hold either at the time of Closing or as a result thereof fee simple title in and to the Land, and Owner shall hold or will hold either at the time of Closing or as a result thereof a leasehold interest in and to the Land located in Houston, Harris County, Texas, having an address of 733 N. Drennan Street, Houston, Harris County, Texas, 77003, and more particularly described on EXHIBIT "A", subject however, to the Permitted Encumbrances (as defined in the Deed of Trust). Owner shall promptly disclose to the Director if Owner or Borrower has acquired the Land from Fee Owner; or any officer, director, employee, partner, company or individual of, related to or affiliated with Borrower or Owner.

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 Fee Owner has an effective agreement providing that another party is liable for all liability, accruing prior to Fee Owner's acquisition of the Land or Project, for ad valorem taxes owing as a result of a 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 (and by Owner to Borrower or City) concerning Borrower's and Owner's financial condition are true and correct in all material respects and, upon the Closing of the City Loan and the Other Financing, Owner and Borrower have the financial capacity to carry out their obligations under this Agreement and the Loan Documents as well as under the Owner Loan and the Owner Loan Documents. If any material negative change in either Borrower's or Owner's financial condition occurs, Borrower and Owner 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, Owner 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 and Owner have provided the City with a true and correct listing with addresses of all multifamily properties owned or managed by Borrower and/or Owner.

2.5. Authorization. All action on the part of Borrower and Owner 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 and Owner.

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 and Owner do 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 and Owner 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 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 Owner's equity.

2.8. Expertise. Owner 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 nonprofit corporation, duly created and validly existing and in good standing under the laws of the State of Texas. Owner is a limited partnership, duly created and validly existing and in good standing under the laws of the State of Texas.

2.10. Insurance Claims. Borrower and Owner have provided the Director with true and correct copies of all insurance claims that are currently made or which Borrower and Owner plan 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/or Owner, and such Governmental Authority to assure the complete construction and installation of such roadways.

2.12. Conflict of Interest. Neither Borrower nor Owner has 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 and Owner 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 Owner 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 Owner if required by the Director in the Director's reasonable discretion.

3.2. Execution and Approval of Architect's Contract. The Owner 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, any 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 or Owner shall pay the City \$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.

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 and Owner 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, if any, and the Owner Loan Documents, such approval not to be unreasonably withheld.

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 refinancings or refundings 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 Senior Loan, as well as Borrower, Owner 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 reasonable notice of default of Owner under the 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, such approval not to be unreasonably withheld. 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 5% of hard costs 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 Owner, at the Owner'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 sum of the remaining undisbursed portion of the City Loan, the Other Financings (if any), and Owner equity contributions for the Project, together with amount of the deferred developer fee and estimated future Net Operating Income, is adequate to complete the Work and the Project. The Owner's agreement with any Approved Inspectors engaged by Owner 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. Notwithstanding the foregoing, if Senior Lender's inspectors are acceptable to the City, such inspectors shall be deemed Approved Inspectors 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. The City may charge and Borrower or Owner shall pay \$1,000.00 a month for construction inspections or review throughout the construction period; provided that, if the Approved Inspector's reports for the Senior Lender allow the City to rely on such reports, the City shall not charge the foregoing fee.

3.10. Construction Contract and Related Matters.

3.10.1. Approved Construction Contract. Owner and Contractor (and Contractor and its prime subcontractor, if any) 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 be indicated as a fixed dollar amount which shall be determined in a manner that does not exceed amounts that are commercially customary and reasonable for similar affordable multifamily development projects.

3.10.2. Bonds. Owner or Contractor (or the prime subcontractor with responsibility for the entire Project) 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 sole discretion.

3.10.3. “Defects Warranty”. Owner shall cause Contractor (or the prime subcontractor with responsibility for the entire Project) 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 Owner, or Contractor for the benefit of Owner, 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, Owner 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 Owner, at Owner'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 Uniform Relocation Assistance and Real Property Policies Act of 1970 ("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 Appendix L.

The appraisal shall be acceptable to the Director, shall be prepared by a qualified appraiser approved by the City and certified to the City.

3.13. Survey. The Director shall have approved a current survey ("Survey") of the Land complying with the "Survey Requirements" ("Survey Requirements") in the Appendices and showing, among other things detailed in the Survey Requirements, that none of the improvements located within the Project are within an identified (shaded) special flood hazard area (including without limitation, the 100-year flood hazard area).

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 or Owner'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 sole discretion. This requirement may be waived by the Director if the Director receives a satisfactory opinion from Borrower's and/or Owner's legal counsel as to the perfection and priority of the Restrictive Covenants.

3.14.2. City's Loan Title Policy. The Title Company shall issue at Borrower's or Owner'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 (if applicable) shall be endorsed as deleted.

3.14.4. Insured Closing Service Letter. The Title Insurer (as defined in Section 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 or Owner, at the Borrower's or Owner'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 applicable, 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 and Owner 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 and other Loan Documents, each naming the City as loss payable or mortgagee.

3.17. Reserved.

3.18. Cost Reasonableness Analysis; Property Condition Assessment Borrower and/or Owner 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 or Owner'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 have caused Owner to adopt, and Owner shall have adopted, written tenant selection policies and criteria reasonably acceptable to the Director ("Tenant Selection Policy"). Owner'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. Owner 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. Purchase Agreement. Owner shall provide City with a copy of the Purchase Agreement for the Project.

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

3.24. Utility Letters

Borrower shall or shall cause Owner to 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 or shall cause Owner to 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.

3.26. Ground Lease. Fee Owner, as landlord, and Owner, as tenant, shall enter into the Ground Lease covering the Project.

3.26.1. Ground Lease Content. The Ground Lease shall be in form and substance acceptable to the City, in its sole discretion, and may not be amended without the Owner obtaining the City's prior written consent, such consent not to be unreasonably withheld. Except as otherwise herein provided, or as provided in the Ground Lease as to Senior Lender's rights thereunder, the Ground Lease may not be transferred or assigned without obtaining the City's consent, which shall not be unreasonably withheld. The foregoing notwithstanding, after the Tax Credit Compliance Period, no consent from the City shall be required for transfers described in, and consented to by the City pursuant to the terms of, Section 10.1.12 of this Agreement.

3.26.2. Performance of Borrower and Owner. On the commencement date of the Ground Lease or such earlier time as Owner, as tenant thereunder, takes possession of the Project, Borrower shall cause Owner, and Owner as tenant, shall comply with all Affordability Requirements and operational covenants contained in this Agreement relating to the Project including, without limitation, Section Three, Paragraphs 3.19, 3.20 and 3.25 and Section Six, Paragraphs 6.6-6.29, and such requirements shall be set forth, or incorporated by reference, in the Ground Lease. The requirement for compliance with all Applicable Laws under Section Six, Paragraph 6.23 shall include, without limitation, those laws set forth under **APPENDIX 1** of this Agreement. Any consent or approval required of Fee Owner, as landlord under the Ground Lease, relating to any matter covered by this Loan Agreement shall be contingent on Owner, as tenant

under the Ground Lease, obtaining the Director's consent or approval as well, not to be unreasonably withheld (unless otherwise required by this Agreement).

3.27. Other. Such other financial information or other documents that are required by the Loan Documents.

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 in writing by the City:

4.1. Delivery and Execution of Documents. Borrower, Owner and Guarantor as the case may be, shall, 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 Note;
2. Collateral Note, endorsed to the City;
3. the Leasehold Deed of Trust and the Fee Deed of Trust;
4. the Financing Statements;
5. the City's Restrictive Covenants;
6. Collateral Assignment (Owner Loan);
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. Owner Loan Agreement;
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 and Owner 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, except as described in the Affidavit of No Commissions or as may be shown in the Approved Final Project Budget;
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. a copy of the fully executed Owner Loan Documents;
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 and the Owner's (as applicable) 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 (unless waived in accordance with the terms of Section 3.14.1 hereof);
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 Owner authorizing the Owner Loan or other evidence satisfactory to the Director that Owner has authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City Attorney ("Owner's Resolutions");

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 ("Guarantor's Resolutions");
44. legal opinion(s) of counsel for Borrower, Owner and Guarantors addressing, without limitation the authority of the parties signing this agreement and the closing documents on behalf of the Borrower, Owner 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 Owner's Affirmative Fair Housing Marketing Plan;
46. the Tenant Selection Policy;
47. the Entity Documentation and Owner'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;
50. Ground Lease; and
51. 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 46-50 listed above must be in form and substance acceptable to the Director and the City Attorney, in their sole discretion. Items 21-23, 26-33, 37-41, 45 and 51 must be in form and substance acceptable to the Director, in his or her sole 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. Furthermore, with reasonable prior notice to Borrower and Owner, 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, for purposes of the closing draw, 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 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, but 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.

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 the thirtieth (30th) day after the Effective Date (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 and Owner, in which event the City's obligations hereunder shall automatically cease and be of no further effect.

4.6. City Expenses. Borrower shall pay or cause Owner to 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 \$49,000.00).

SECTION FIVE
CITY AND FEDERAL FUNDING LIMITATIONS

5.1. Dependency Upon Federal Funding. Borrower and Owner understand 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 or Owner 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 or Owner and without being liable to Borrower or Owner for any damages Borrower or Owner may incur as a result of such cessation in funding. The City shall give Borrower and Owner 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 and Owner with notice of interruption as contemplated in this Section Five, Borrower and Owner 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, and 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 or the Owner 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 AND OWNER

Borrower and Owner agree as follows:

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

6.1.1 Use of Proceeds. Borrower shall cause Owner to, and Owner shall use the proceeds of the Owner Loan and the Other Financing only for items included in the Approved Final Project Budget. Further, proceeds of the City Loan (as distributed pursuant to the Owner 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 or the Owner 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 Owner 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.

6.1.2 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 Senior Lender, Subordinate Lender, Owner and Borrower, in the form attached hereto in the Attachments.

6.1.3 Reimbursement to City. Borrower agrees that it and Owner will 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 or Owner's expenditure of funds loaned to it (or for the benefit of Owner) 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 cause Owner to, and Owner shall, begin the Work within two (2) months 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 cause Owner to, and Owner shall complete the Work in accordance with the Approved Construction Schedule but in no case later than the earlier of (i) eighteen (18) months after the Closing of the City's Loan, subject to Force Majeure not to exceed ninety (90) days, 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, such approval not to be unreasonably withheld. Subject to waiver by the Director, neither Borrower nor Owner shall 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 cause Owner to, and Owner shall perform or cause to be performed, the Work in a good and workmanlike manner and substantially in accordance with the Approved Plans, Specifications and Drawings, the Approved Construction Schedule (subject to delays caused by Force Majeure not to exceed ninety (90) days), the Approved Final Construction Budget and the Approved Construction Contract. Borrower shall cause Owner to, and Owner 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 cause Owner to, and Owner shall fully and timely perform Owner's obligations under the Approved Construction Contract.

6.2.4. Written Agreements With Subcontractors. Borrower shall cause Owner to, and Owner 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, for "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 Owner (if the Owner 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. Owner's Insurance Requirements. Borrower shall cause Owner to, and Owner 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 cause Owner to, and Owner 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 Owner to, and Owner shall maintain or cause Contractor to maintain builder’s risk insurance 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 cause Owner to, and Owner 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 cause Owner and Owner shall promptly make any corrections or modifications to the Work as 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 prior to Project Completion, and annual inspection thereafter (unless a Default has occurred and is continuing); (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, Owner 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 cause Owner to, and Owner 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. Resiliency Design Requirements.

The Project design must incorporate the following resilient building measures as outlined by the Multifamily Building Resilience Checklist :

- (1) Protection:
 - Wet Floodproofing
 - Resilient Elevator modifications
- (2) Adaptation:
 - Elevated Equipment
 - Elevated Living Space
 - Distributed Heating and Cooling
- (3) Back-Up Measures:
 - Emergency Lighting
- (4) Community:
 - Building Community Ties
 - Develop an Emergency Management Manual
- (5) Green Building Standards:
 - ICC-700 National Green Building Standards (Bronze)
- (6) Solar:
 - Solar Ready Design and Construction
- (7) Electric Vehicles:
 - Electrical Vehicle ready

- (8) Green Infrastructure:
 - Vegetated Filter Strips

At the completion of construction of the Project and as a condition to the release of the retainage, Borrower and Owner shall provide the necessary documentation for the Director to verify compliance with this Section.

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 forty-one (41) units, being at least fifty-one percent (51.0%) of the eighty (80) 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 cause Owner to, and Owner 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, adjusted for family size ("AMI"), as determined by HUD.
- (b) Designated Units shall be rent restricted based upon the following criteria:
 - (1) At least six percent (6%) or five of the Designated Units shall be restricted to households with gross incomes that do not exceed thirty percent (30%) of AMI.
 - (2) At least eleven percent (11%) or nine of the Designated Units shall be restricted to households with gross incomes that do not exceed fifty percent (50%) of AMI.

(3) At least twenty-one percent (21%) or seventeen of the Designated Units shall be restricted to households with gross incomes that do not exceed sixty percent (60%) of AMI.

(4) At least thirteen percent (13%) or ten of the Designated Units shall be restricted to households with gross incomes that do not exceed eighty percent (80%) 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)(1)(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 cause Owner to, and 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. Floating Designated Units shall conform with 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 cause Owner to, and Owner 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 Owner for the coming year

for Designated Units and the monthly allowances proposed by Owner for the coming year for utilities and services to be paid by the tenant. In connection with Owner's annual submission of proposed rents, Borrower shall cause Owner to, and Owner shall reexamine the income of each tenant family living in a Designated Unit. Borrower shall cause Owner to, and Owner 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 cause Owner to, and Owner 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 cause Owner to, and Owner shall, throughout the Affordability Period, maintain the Project in good condition and repair, ordinary wear and tear and insured casualty 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 Owner 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 receipt of written notice of such dangerous condition or imminent hazard and prosecuted diligently to completion.

6.11. Tenant Lease Requirements. Prior to the date that Owner 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. Owner shall not make any modifications

to such form lease without the Director's prior written approval. Borrower shall cause Owner to, and Owner shall enter into leases in such approved form, without material revisions, with each tenant of a Designated Unit. The term of each lease of a Designated Unit shall not be less than one year unless Owner and the tenant mutually agree otherwise.

6.12. Reserved.

6.13. Tenant Selection Policy; Marketing. Borrower shall cause Owner to, and Owner 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. Borrower shall cause Owner not to, and Owner 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. Owner 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 cause Owner to, and Owner shall follow the recordkeeping requirements set forth in this Agreement or required by the City or the Director, including to establish and maintain such records as may be necessary to facilitate review and audit by City

representatives (including without limitation the Director and City Controller) (collectively, the "City Representatives") or GLO or HUD of the City Loan and any documentation required in connection with the CDBG Regulations under 24 C.F.R. § 570.492 and 24 C.F.R. § 570.493. The City Representatives, GLO and/or HUD or any of their authorized representatives shall have the right to audit Borrower's and Owner's books and records and compliance with this Agreement upon reasonable notice to Borrower or Owner, as applicable. If such books and records are located outside of Harris County, Texas, Borrower and Owner agree to make them available in Harris County, Texas.

6.15.2. Borrower and Owner shall provide to the Director: (a) quarterly balance sheets and operating statements for the Project not later than the 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 15th 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 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 Owner and Borrower, in a form acceptable to the Director, within 120 days (for unaudited statements) and six (6) months (for audited statements, if any) following the close of Owner's and Borrower's respective fiscal years; and (d) prior to the termination of the Construction Completion Guaranty, annual financial statement (balance sheet and income/operating statement) within 120 days (for unaudited statements) and eight (8) months (for audited statements, if any) following the close of Guarantors' fiscal year. The annual financial statements of Owner and Borrower shall be audited by an independent certified public accountant upon the request of the Director. If the Director or

City Controller requires, Borrower shall and shall cause Owner to, and Owner 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 Owner's compliance with the requirements of this Agreement, Borrower shall cause Owner to and Owner 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 or Owner for purposes of meeting CDBG-DR17 Program requirements and the contractual requirements of this Agreement; provided, however, Borrower and Owner may provide copies of such information to third parties.

6.15.5. Borrower shall cause Owner to, and Owner 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 or Owner 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 and Owner 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 or cause Owner to pay an annual monitoring compliance fee to the City in the amount of \$30.00 per Designated Unit.

6.16. Notice of Claims or Suits. Borrower shall cause Owner to, and Owner 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, Owner, or Guarantor, or, to the extent that it would have a material adverse effect on the Project, and Borrower and/or Owner have 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 "Owner" shall mean and include, collectively, Owner and its general contractor(s). In order to monitor Owner's good faith efforts to adhere to the City's MWSBE's programs, Borrower shall cause Owner to and Owner 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 the term of any of the Loan Documents, neither Borrower nor Owner shall enter into any transaction in connection with this Agreement with any director, officer, employee, partner, or affiliate of either Borrower or Owner without the prior written approval of the Director. The Development Fee Agreement between the Owner and an affiliate of Owner shall not require consent provided that the development fees to be paid therein are part of the Approved Final Operating Budget or Approved Final Project Budget as applicable. If the Land for the Project was acquired by Borrower or Owner from any director, officer, employee, partner, or affiliate of Borrower or Owner, 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 cause Owner to and Owner shall pay all applicable taxes for the Project before delinquency and all insurance premiums for the Project at least 15 days before the due date to prevent any lapse in coverage. Borrower shall cause Owner and Owner 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 Owner escrows funds with Senior Lender, Owner shall provide the City with evidence of the adequacy of such escrows. Further, to the extent that Owner fails to escrow funds with the Senior Lender, the Director reserves the right to require Owner to escrow funds for taxes and insurance premiums with the City.

6.20. HUD Section 3 Requirements. If applicable, Borrower shall cause Owner to and Owner 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 cause Owner to 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 and Owner if the assistance provided for in this Agreement exceeds \$200,000.00, and to contractors and subcontractors for contracts or subcontracts that exceed \$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 Owner's intention to retain any person or firm for the purpose of constructing, leasing and managing the Project and Borrower shall cause Owner to, and Owner shall provide evidence of the expertise and competence of such persons and firms that Owner intends to engage for the purpose of constructing, leasing and managing the Project.

6.23. Compliance with Applicable Law.

6.23.1. Borrower shall cause Owner to, and Owner 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 and Owner will conduct all activities under this Agreement and the Loan Documents in accordance with Applicable Law.

6.23.3. Borrower and Owner acknowledge and agree that they are required to comply with all Applicable Law with respect to lead-based paint (42 U.S.C. Sec. 4831(b)) and asbestos containing materials within the Project.

6.23.4. Borrower shall cause Owner, and Owner shall cause the Project and the Work to comply with the requirements of the 2010 ADA Standards (as hereafter defined) under 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"). At least five percent (5%) of the total number of units at the Project (i.e. four (4) 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 to the accessible units described in the preceding sentence, at least two percent (2%) of the units at the Project (i.e. two (2) 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 cause Owner, and Owner shall comply with CDBG Regulations at 24 C.F.R. Part 570, 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 cause Owner, and Owner 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 cause Owner, and Owner 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 Owner 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 cause Owner, and Owner 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 or Owner, as applicable.

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 cause Owner to, and Owner 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) \$300.00 per unit annually, increased by 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 Owner to fund such Replacement Reserve Account, in an annual amount not less than \$300.00 per unit, increased by 3% annually, in accordance with the terms of this Paragraph 6.24. Unless a Default exists beyond the expiration of all applicable notice and cure periods, Owner shall be entitled to utilize amounts in the Replacement Reserve Account as necessary, provided that Owner 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 cause Owner to, and Owner shall provide the Director with an accounting of the Replacement Reserve Account. If not required by the Senior Lender or Owner's Partnership Agreement, the Director may require Owner to

establish an Operating Reserve for the Project at Project Completion on terms and conditions as approved by the Director in the Director's reasonable determination.

6.25. Insurance Provisions in the Deed of Trust. Borrower shall cause Owner to, and Owner shall comply with all insurance requirements set out in the Senior Mortgage, the Leasehold 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 or Owner, 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 Agreement, any distribution in excess of such amount shall entitle the Director to declare a Default hereunder subject to applicable notice and to cure periods. For example: If the debt service on the Project was \$100,000 per year and the available cash before payment of debts was \$200,000, the Project would have a debt service ratio of 2:1. \$100,000 of the cash would be used to pay debt service, \$50,000 (only) would be available for distribution and the remaining \$50,000 would be reserved by Owner and promptly invested in the capital improvement of the Project, invested in additional services for residents, 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, invested in additional services for residents, or deposited in the Replacement Reserve Account as provided above. Borrower and Owner covenant to notify the City in writing at least ten (10) days in advance of any distribution of Project income to Borrower's or Owner's partners, shareholders or members as applicable. Cash flow from the Project shall be calculated prior to the payment of rent under the Ground Lease. For purposes of this Paragraph 6.28, "distribution" means those amounts distributed to Owner's partners as identified in the Partnership Agreement that are not a payment (or repayment) of specific amounts due to such partners. By way of example and not as a limitation, a payment to Borrower's partners for assumed tax liability, tax credit shortfalls, tax credit adjusters, and loan repayments shall not be deemed a distribution.

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 \$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 and

such other 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), 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 cause Owner and Owner 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 or Owner may, with the Director's approval, such approval not to be unreasonably withheld, (i) 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 or (ii) reallocate savings for change orders beyond the scope of the Approved Plans, Specifications, and Drawings.

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 Paragraph 9.5. When a disbursement of Loan Proceeds is requested, Owner shall provide to Borrower for delivery to the Director, or Owner shall provide directly to the Director (but in no event more often than once a month and for an amount of not less than \$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. In addition to the other information required by the Director, the initial disbursement request shall include a copy of all required permits necessary to commence construction. If the Director objects to an item (or the applicable portion thereof to which the Director objected) included in any Disbursement Request or if all required information has not been submitted, then the Director shall notify Owner within 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 the applicable portion thereof to which the Director objected) until such time as Owner 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 30 calendar days following approval of Owner'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 \$5,000 nor shall the City be required to make more than one disbursement per month. With each draw, the Owner 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 Paragraph 10.3 hereof):

10.1.1. Failure to Pay.

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

(b) If Owner fails to pay the Borrower when due any portion of the indebtedness evidenced by the Owner Loan and such failure continues beyond all applicable notice and cure periods contained in the Owner Loan Agreement.

10.1.2. Breach of Affordability Requirements and/or Restrictive Covenants. If Borrower or Owner 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 and Owner or (ii) any other covenant, condition, representation or warranty contained in the Restrictive Covenants, and such breach continues for thirty (30) days after the City delivers written notice thereof to Borrower and Owner, and Borrower and Owner shall not have any additional 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 or Owner 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 and Owner, 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 (ii) any breach or failure of performance of a life safety requirement, such event may be deemed and declared by the Director to be 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 or Owner 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 and Owner shall have thirty (30) days after written notice to the Borrower and Owner 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, such event shall be deemed a Default hereunder without any notice or opportunity to cure.

10.1.5. Voluntary Actions. If Borrower, Owner 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, Owner 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, Owner 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 or Owner 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 or by an event of Force Majeure which does not extend more than ninety (90) days.

10.1.10. Failure to Obtain or Default Under Other Financing. If Borrower or Owner fails to obtain any funding of the Other Financing in the order required under the Intercreditor Agreement (if applicable) or if Owner or 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 and Owner.

10.1.12. Change of Ownership or Management.

(a) Except as otherwise permitted by the terms of this Agreement, if all or any part of Owner's or Fee Owner's interest in the Project is transferred (excluding transfers of membership or partnership interests in Owner to or by the Tax Credit Investor (or any entity permitted pursuant to Paragraph 10.1.15) or by its members or partners holding less than forty-nine percent (49%) ownership interest in Owner, 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 the Director's reasonable determination. In the case of a transfer of Owner's interest in the Project and/or the Ground Lease, 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 and Owner under the Loan Documents and the Ground Lease in a form acceptable to the Director and the City Attorney. Notwithstanding the foregoing or anything else to the contrary set forth in the Loan Documents, the City acknowledges that (a) General Partner (or an affiliate thereof) and Borrower (or an affiliate thereof) each hold certain rights to acquire the Project and/or partnership interests in Owner at the end of the Tax Credit

Compliance Period, as more particularly described in that Right of First Refusal Agreement and Purchase Option dated on or about the date hereof, executed by Owner, Borrower, General Partner, Tax Credit Investor, and Special Limited Partner (the "Option/ROFR Agreement"), and (b) such acquisitions are preapproved and require no further consent from the City; provided that (i) such transfers are structured to avoid a merger of title, the termination of the Ground Lease or the impairment or enforceability of the City's Loan and its collateral therefor, and (ii) the acquiring party assumes all obligations under this Loan Agreement and the other Loan Documents.

(b) If there is otherwise a change in control of Borrower without Director's consent, such change shall be in violation of this Agreement.

(c) 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 Owner or 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 a materially adverse 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 and Owner of such finding or exception or for such greater period as shall be necessary to cure such finding or exception so long as Borrower or Owner commences

to cure such finding or exception within thirty (30) days after written notice thereof to Borrower and Owner and satisfactorily completes such cure.

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

10.1.16 Transfer of Tax Credit Investor's Partnership Interest. Notwithstanding anything to the contrary contained in this Agreement or the Loan Documents, no consent shall be required from the City or the Director (and the same shall not be deemed a Default or an event of default under any of the Loan Documents), in connection with (a) the pledge and encumbrance of the Tax Credit Investor's limited partnership interest in Owner to or for the benefit of any financial institution that enables such Tax Credit Investor to make its capital contribution to Owner, (b) the transfer and/or the assignment by Tax Credit Investor of its interest in the Borrower to an entity controlled or managed by an entity which is related to or under common control with Tax Credit Investor, or (c) after the payment of all installments pursuant to Section

5.01(c) of the Owner's Partnership Agreement, transfer by the Tax Credit Investor of its interest in the Owner to any entity.

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, neither Borrower nor Owner shall 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 of the Designated Units 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 of 1986, as amended.

10.3. Right to Cure. Any time there is an event or a condition described in Paragraph 10.1, above, which, with the passage of time might become a Default, if the Project has received Other Financing from low income housing tax credits, Guarantor, 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 or Owner. 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. Owner's & Guarantor's Right to Cure. Anytime there is an event or condition described in the Loan Documents which, with the passage of time might become a Default, if the Project has received other financings from low income housing tax credits, Owner and Guarantor shall each 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 Owner and/or Guarantor 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.

10.5. City's Remedies. Upon the declaration of a Default by the Director and the failure by Borrower or Owner 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 or Owner 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 and Owner shall be obligated to continue and complete the Work at Borrower’s expense.

10.6 **Non-Recourse Liability.** Neither Borrower nor any member of Borrower will have any personal liability under the Note, this Agreement nor any other Loan Document for the repayment of the City Loan. This limitation on Borrower’s liability will not limit or impair City’s enforcement of its rights against any Guarantor nor against Owner.

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 Owner for delays, defective workmanship or material, or for other items related to Work on the Project and such sums are not used by Owner 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 cause Owner to and Owner shall 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, notwithstanding anything to the contrary set forth in this Agreement, to the extent that cost savings result in reduction in eligible basis for the Project, or will not be applied to projections for additional capital costs that would be considered eligible costs for tax credit certification under the applicable rules related thereto, 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. OWNER, BORROWER, THEIR 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 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. EACH OF BORROWER AND 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 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 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 OWNER. FURTHER, THE COVENANTS MADE IN THIS PARAGRAPH 14.2 TOGETHER WITH ALL OTHER INDEMNIFICATION REQUIREMENTS OF BORROWER AND OWNER SHALL BE JOINT AND SEVERAL OBLIGATIONS OF BORROWER AND OWNER.

SECTION FIFTEEN
NOTICE

All notices, demands, certificates, or other communications hereunder or under any of the Loan Documents 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 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 sent to each of them shall be addressed as follows (notices sent to Owner or Borrower under any of the Loan Documents shall be sent to both Owner and Borrower):

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, Real Estate

With a copy to: Housing and Community Development Department
 2100 Travis, 9th Floor
 Houston, TX 77002

Attention: Director

TO BORROWER:

The Buffalo Bayou Partnership
1019 Commerce Street
Houston, TX 77002
Attention: Anne Olson BBP Lockwood Foley GL
Family, LLC

With a copy to:

Lockwood South Apts, LP
c/o Brinshore Development, L.L.C.
666 Dundee Road, Suite 1102
Northbrook, IL 60602

TO OWNER:

Attention: Richard J. Sciortino
Lockwood South Apts, LP,
c/o Brinshore Development, L.L.C.
666 Dundee Road, Suite 1102
Northbrook, IL 60602
Attention: Richard J. Sciortino

TO SENIOR LENDER:

Capital One, National Association
299 Park Avenue, 14th Floor
New York, New York 10171

**TO TAX CREDIT
INVESTOR:**

USA Institutional Lockwood South LLC
777 West Putnam Avenue
Greenwich, CT 06830
Attention: Joanne D. Flanagan, Esq.

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 subrecipient or fiduciary relationship between City and Borrower and/or the City and Owner.

18.2. Parties in Interest. Except for the rights of the GLO specifically set forth herein, this Agreement shall not bestow any rights upon any third party, but, rather, shall bind

and benefit the City, Owner 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 Owner 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, Borrower, and Owner, and there are no other effective agreements, representations or warranties between all of the City, Owner 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 or Owner 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 or the Owner 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. Flood Insurance Requirements and Transfer of Property: Flood Insurance. If applicable, during the term of this Agreement, Borrower and Owner, as applicable, 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 100-year or 500-year floodplain or Special Flood Hazard Area designated by FEMA, Owner 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 and Owner understand and acknowledge 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 Owner or any subsequent transferring owner, the applicable flood insurance requirements under this Paragraph are transferred to the new Property owner. Owner 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. Owner 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 or Owner 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 Owner's purpose. Borrower and Owner acknowledge that neither the City nor the Director is an engineer or an architect and that Owner 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 and Owner agree 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 circuit court sitting in Harris County, Texas, and Borrower and Owner agree 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 Owner 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, unless the applicable contract or subcontract is terminated. 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 or Covid-19. 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 or Covid-19, 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. The parties agree that the COVID-19 pandemic may have an impact on the timing of performance under this Agreement due to closures or reductions in staffing of government offices and private businesses, travel and contact restrictions and other issues

beyond the control of the parties. The parties will work together in good faith to extend any such period in accordance with this Section.

18.20. Anti-Boycott of Israel 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.

Borrower certifies that Borrower is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

18.23. Anti-Boycott of Firearm Entities or Firearm Trade Associations.

Borrower certifies that Borrower does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

18.24. Certification of No Business with Foreign Terrorist Organizations.

For purposes of Section 2252.152 of the Code, Borrower certifies that, at the time of this Agreement neither Borrower nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Borrower, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company 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 or Owner'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 and Owner. 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 and Owner, 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.

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, without limitation, execution of the Intercreditor Agreement. 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 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. Except in connection with the conversion of the construction financing to the permanent financing for the Project, the Senior Loan may not be refinanced except as may be approved in writing by the Director, such approval not to be unreasonably withheld, delayed or conditioned.

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.

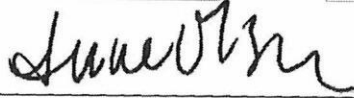
IN WITNESS WHEREOF, the parties execute this Agreement in multiple counterparts as of the date of countersignature by the City Controller as set out below.

[SIGNATURE PAGES FOLLOW]

Loan Agreement Signature Pages

BORROWER:

THE BUFFALO BAYOU PARTNERSHIP,
a Texas nonprofit corporation

By: 

Anne Olson, President

OWNER:


LOCKWOOD SOUTH APTS, LP,
a Texas limited partnership

By: Lockwood South GP, LLC,
a Texas limited liability company,
its general partner

By: Lockwood South MM, LLC,
a Texas limited liability company,
its managing member

By: Brinshore Development, L.L.C.,
an Illinois limited liability company,
its managing member

By: RJS Real Estate Services, Inc.,
an Illinois corporation,
its member

By: 

Richard Sciortino, President

DS



SEAL/ATTEST:

DocuSigned by:
Pat Jefferson Daniel
2F30A6366C0E4B1
Pat Jefferson Daniel, City Secretary

CITY OF HOUSTON, TEXAS

Sylvester Turner
Sylvester Turner, Mayor
DocuSigned by:
Brenda Bonham
9722041C6B344EC...

APPROVED:

DocuSigned by:
Keith W. Bynam
69AB087638E6490...
Keith W. Bynam, Director
Housing and Community Development
Department

COUNTERSIGNED:

C. B. Brown
City Controller
DocuSigned by:
Chanelle Clark
B172D137C7AD44E...

APPROVED AS TO FORM:

DocuSigned by:
Kene Chinweze
2D15F4E132574F1...
Senior Assistant City Attorney
LD# 0292000718001

COUNTERSIGNATURE DATE:

7/29/2022

SCHEDULE A

DEFINITIONS

Accessibility Requirements are defined in Section Six, Paragraph 6.23.4.

Affordability Period shall mean the forty (40) year period, which commences upon Project Completion, as defined in this Agreement, during which all Designated Units in the Project must remain affordable (in accordance with the provisions of Paragraph 6.8 hereof) without regard to the term of this 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 the forty (40) years, as may be extended, in accordance with this Agreement .

Available Cash Flow shall mean 50 percent of Net Cash Flow.

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 \$9,950,000.00 made by the City to Borrower for the purpose of financing eligible costs to construct the Project.

City Representatives shall have the meaning set forth in Paragraph 6, Section 6.15.1.

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.

Collateral Assignment (Owner Loan) shall mean that Collateral Assignment of Note and Liens to be executed by Borrower for the benefit of the City and which shall be substantially in the form attached hereto as **ATTACHMENT F**.

Collateral Note shall mean the Promissory Note to be executed by Owner payable to Borrower, which shall be collaterally assigned to the City to secure the City Loan pursuant to the Collateral Assignment (Owner Loan) and which shall be substantially in the form attached hereto as **ATTACHMENT E**.

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

Contractor shall mean a contractor as approved by the Director selected by the Owner 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.

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 both: (i) the Leasehold Deed of Trust, Security Agreement and Financing Statement to be executed by Owner, granting to the Borrower a second lien on Owner's leasehold interest in the Project and which shall be substantially in the form attached as an Attachment to this Agreement (the "Leasehold Deed of Trust"), which lien will be collaterally assigned to the City pursuant to the Collateral Assignment (Owner Loan); and (ii) the Fee Deed of Trust, Security Agreement and Financing Statement to be executed by Fee Owner (the "Fee Deed of Trust").

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

Designated Units shall mean those 41 units in the Project which have been designated by Owner 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 shall mean any environmental mitigation measures and conditions required by the AUGF.

Environmental Review shall mean the environmental review conducted pursuant to 24 C.F.R. Part 58.

Fee Owner shall mean BBP Lockwood Foley GL Family, LLC, a Texas limited liability company, together with its successors and assigns, in its capacity as owner of the fee interest in the Land and lessor under the Ground Lease.

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 Owner's personal property included within the definition of the Project.

Force Majeure. An event of storm, flood, fire, earthquake, hurricane, pandemic or other acts of god, war, terrorism, sabotage, riot, insurrection or other civil disturbance, strikes, lockouts or other labor disturbances, orders of any governmental authority, including without limitation any civil or military authority, declarations of regional, state, or national emergencies or disaster areas, which renders a party temporarily incapable of performance. The term "Force Majeure" specifically excludes events related to COVID-19 existing as of the date of Closing, subject, however, to the other terms of this Agreement.

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, Owner and/or the Land.

Ground Lease shall mean the Ground Lease between Fee Owner, as landlord, and Owner, as tenant, granting Owner a leasehold interest in the Project.

Guarantor shall mean Brinshore Development, L.L.C..

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 the subordination agreements referenced and attached to the agreement, between the City, Owner, Borrower, Subordinate Lender, and 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 Collateral Assignment (Owner Loan), 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.

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

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

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.

Option/ROFR Agreement shall mean have the meaning assigned to such term in Section 10.1.12(a) of this Agreement.

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

Owner is defined in the Preamble to this Agreement.

Owner Loan shall mean a loan to Owner from Borrower for Project costs which shall be evidenced by the Collateral Note and collaterally assigned and endorsed to City.

Owner Loan Agreement shall mean the Loan Agreement between Borrower and Owner evidencing the Owner Loan.

Owner Loan Documents shall mean the loan documents executed by Owner and Borrower evidencing or securing the Owner Loan.

Owner Note shall mean a promissory note from Owner to Borrower evidencing the Owner Loan and collaterally assigned and endorsed to City.

Partnership Agreement shall mean the Amended and Restated Agreement of Limited Partnership of the Owner, as the same may be amended from time to time.

Preliminary Project Budget shall mean the budget for the Project attached as an Exhibit to this Agreement, which has been submitted by Owner 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 Owner located on, incorporated into, or used in connection with the Land and improvements, including without limitation, all leases to

Owner, 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 Fee Owner;
- (ii) the Work has been completed to the satisfaction of the Director, and Owner has delivered to the City an AIA Affidavit of Completion signed by the Owner, 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 the requirements of the CDBG-DR17 Program, 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 City 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 Owner 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 Owner 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 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 Owner, which shall be substantially in the form attached hereto as **ATTACHMENT A** to this Agreement, which covenants require Owner 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 Capital One, National Association, or other lender approved by the Director.

Senior Loan shall mean the loan in an original principal amount not to exceed the amount of \$12,708,749 during construction and not to exceed the amount of \$4,500,000 after conversion (unless otherwise approved by the Director, not to be unreasonably withheld) made by Senior Lender to Owner, secured by the Project, and subordinate to the Restrictive Covenants pursuant to the Intercreditor Agreement (including the Permanent Subordination Agreement, as such term is defined in the Intercreditor Agreement). Prior to Closing, any increase to the Senior Loan amount that does not exceed 25% of the original amount may be approved in writing by the Director. Subject to the Director's consent, not to be unreasonably withheld, delayed or conditioned, the Senior Loan may be refinanced, provided that the principal balance of the new loan shall not exceed the aggregate of the outstanding principal balance of the loan being repaid, proposed capital improvements, reserves, loan fees, plus reasonable and customary closing costs, or otherwise in accordance with Section 19.6 of this Agreement, as applicable.

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 deed of trust executed in connection with the Senior Loan, which shall include the lien or liens securing the Senior Loan.

Special Limited Partner shall mean The Richman Group Capital Corporation, together with its successors and assigns.

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 \$1,300,000.

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)(I) of the Internal Revenue Code of 1986, as amended.

Tax Credit Investor shall mean USA Institutional Lockwood South LLC.

Tax Credits means the Low Income Housing Tax Credits issued to Owner by the Texas Department of Housing and Community Affairs pursuant to Section 42 of the Internal Revenue Code of 1986, as amended.

TDHCA Restrictive Covenants means that 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	City Workforce 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-1. Leasehold Deed of Trust
- C-2. Fee Deed of Trust
- D. Financing Statements
- E. Collateral Note
- F. Collateral Assignment (Owner Loan)
- 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. Owner Loan Agreement

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APPENDIX 1
NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

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 FOR THE APPROVED CONSTRUCTION CONTRACT AND THE OTHER
CONSTRUCTION AND SUPPLY CONTRACT**

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 or 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

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. _____

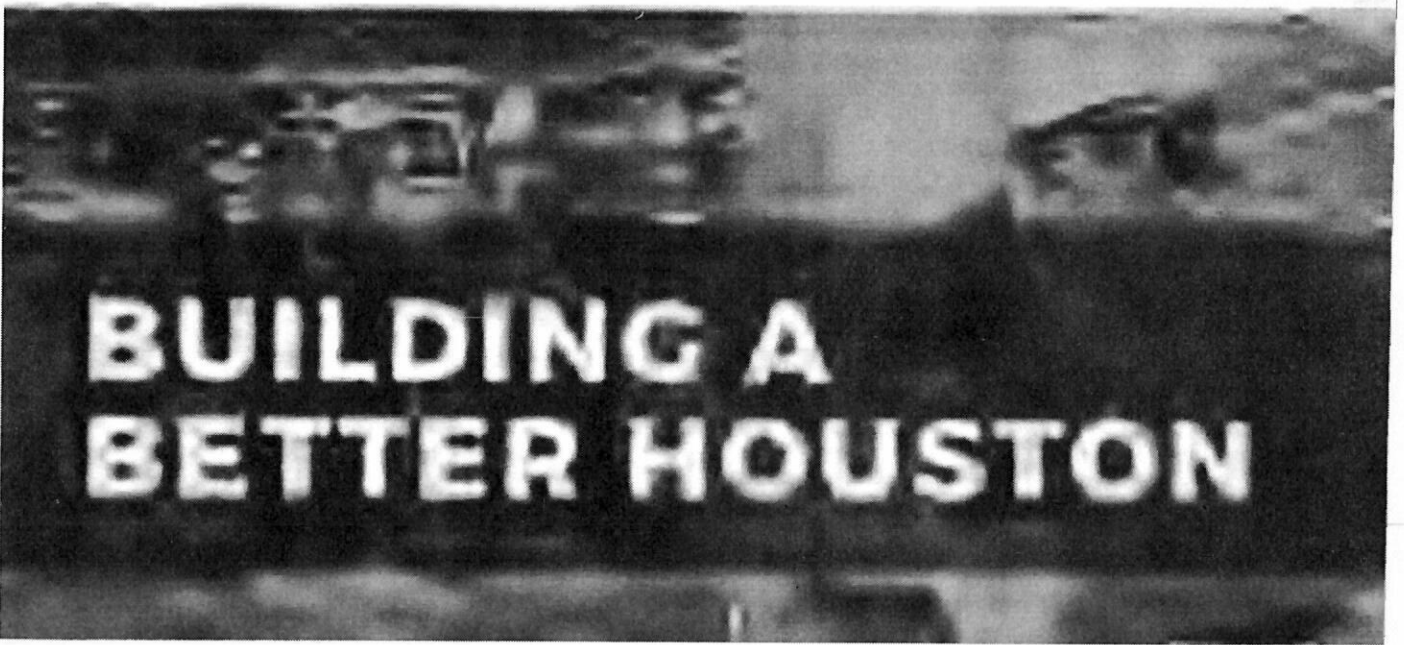
Note: This copy of this plat is not valid unless an original signature through an original seal appears on its face.

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.

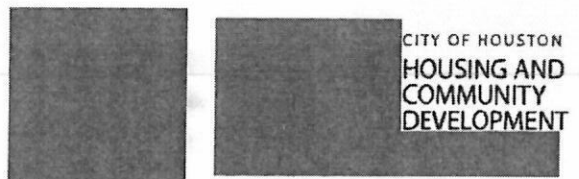
APPENDIX 5

**MONITORING FORMS INCLUDING COMPLIANCE FORMS FOR COMPLYING WITH SECTION 3 OF THE
HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 U.S.C.SEC1701U)**



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

www.houstontx.gov/housing



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 Tate	(832) 394-6345 Lakesha.Tates@houstontx.gov
MWSBE Coordinator	Taylisha Clark	(834) 394-6326 Taylisha.Clark@houstontx.gov
MWSBE Contract Administrator	Eva Alcala	(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
<input type="checkbox"/> 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
Check the applicable entity	<input type="checkbox"/> Partnership <input type="checkbox"/> Other

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**

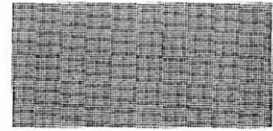


zation Plan when selected and then once every month and/or when there are changes to utilization and/or contract amounts. All Subcontractors, and Owner/Developer are also month and/or when there are changes to utilization and/or contract amounts. Section 3 requires an Owner/Developer(s), Prime Contractor & Subcontractor to award 10% of the firms 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 es. 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 L. Subcontractors working on projects at all tier levels.

BETWEEN THE 1ST AND 5TH OF EACH MONTH.

Number:		ID, Contractor Amount:		IE. Contact Person:		IF. Prime/Subcontractor Name:		IG. Compliance Contact Name:		IH. Compliance Contact Telephone Number:	
st	2C. 10% Hard Cost Goal 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 Goal Met		
Gender (Select drop down Male or Female)	Ethnicity (Refer options below)	Description of Service				FIN or ISS	Contract Amount	% of Contract	Hard Cost, Soft Cost or Supplier (select the correct choice)	Address & Phone Number	
Female	White American										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										
Female	Hasidic Jewish										

Black American, Native American, Hispanic American, Asian/Pacific American and Hasidic Jewish



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: _____

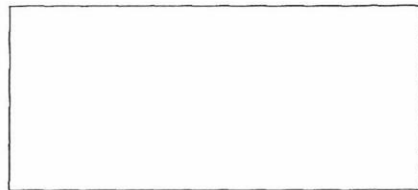
_____ Subscribed and

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

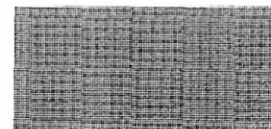
by _____
Section 3 Coordinator

Contractors Name:

by _____
its Owner/President/Vice President

***SECTION 3 ONLY**

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)

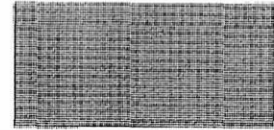
of _____ and that the answers to the foregoing questions and all statements therein contained are true
 (Company Name)
 and correct.

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.



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 New Hires				C Employees		D Trainees				
				No New Hires					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/Elerical											
Trade:											
Trade:											
Trade:											
Trade:											
Other:											
Other:											
TOTAL											
<p>NOTES:</p> <ol style="list-style-type: none"> 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 New Hire Form (PART II)

								Reporting Month/Year:
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	

1 - White, 2 - Black American, 3 - Native American, 4 - Hispanic American, 5 - Asian Pacific American, 6 - Hasidic Jew

either: New Hire, Employee or Trainee
 Resident
 hired by Section 3 New Hire or Section 3 Employee
 hired by Section 3 Trainee
 Employment Type: Full Time, Part Time, FT - Temporary, PT- Temporary, FT-Seasonal, PT-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.

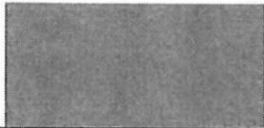
Contract Amount Has Increased to Equal to or Greater Than \$100,000

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 qualifications) _____

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.

ulation

Date:

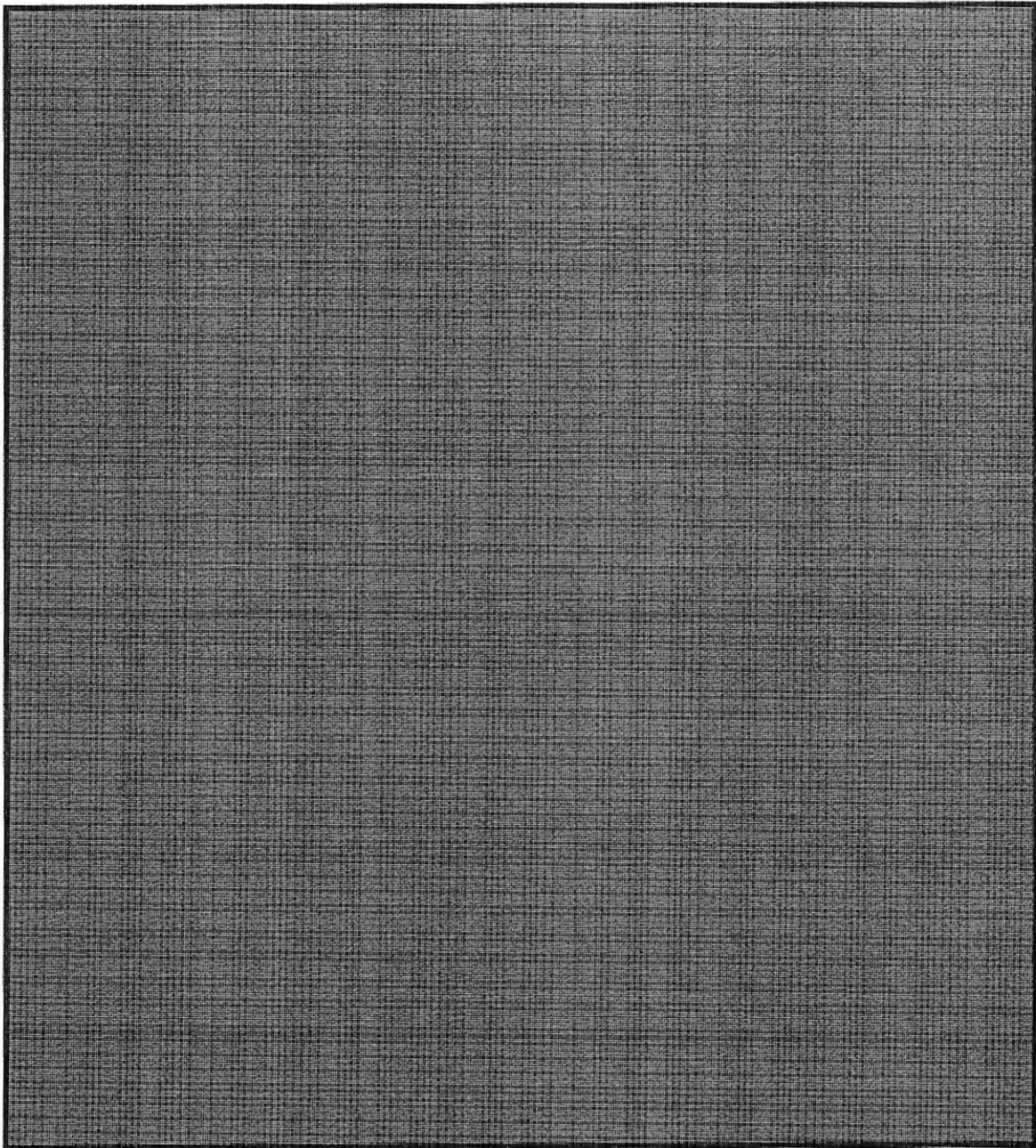
**COST
CODE:**

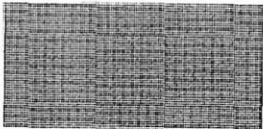
**Projected
Budget**

FACTORS	BID AMOUNT	COST BREAKDOWN
		per unit
		per square foot
		per unit
		per square foot
		per unit
		per square foot
		per unit
		per square foot

Labor \$ -	PM:
Material \$ -	
TOTAL: \$ -	SPM:
CONTRACT:	VP:
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
CERTIFICATION REGARDING LOBBYING

APPENDIX 6

CERTIFICATION REGARDING LOBBYING

The undersigned, Anne Olson, President of The Buffalo Bayou Partnership, a Texas nonprofit corporation, joined herein by Richard Sciortino, President of Lockwood South Apts, LP, a Texas limited partnership, 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:

THE BUFFALO BAYOU PARTNERSHIP,
a Texas nonprofit corporation

By: _____

Name: Anne Olson

Title: President

Date: _____

APPENDIX 7

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

APPENDIX 7

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

The undersigned, Anne Olson, President of The Buffalo Bayou Partnership, a Texas nonprofit corporation, joined herein by Richard Sciortino, President of Lockwood South Apts, LP, a Texas limited partnership, 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:

THE BUFFALO BAYOU PARTNERSHIP,
a Texas nonprofit corporation

By: _____

Name: Anne Olson

Title: President

Date: _____

OWNER:

LOCKWOOD SOUTH APTS, LP,
a Texas limited partnership

By: Lockwood South GP, LLC,
a Texas limited liability company,
its general partner

By: Lockwood South MM, LLC,
a Texas limited liability company,
its managing member

By: Brinshore Development, L.L.C.,
an Illinois limited liability company,
its managing member

By: RJS Real Estate Services, Inc.,
an Illinois corporation,
its member

By: _____

Name: Richard Sciortino

Title: President

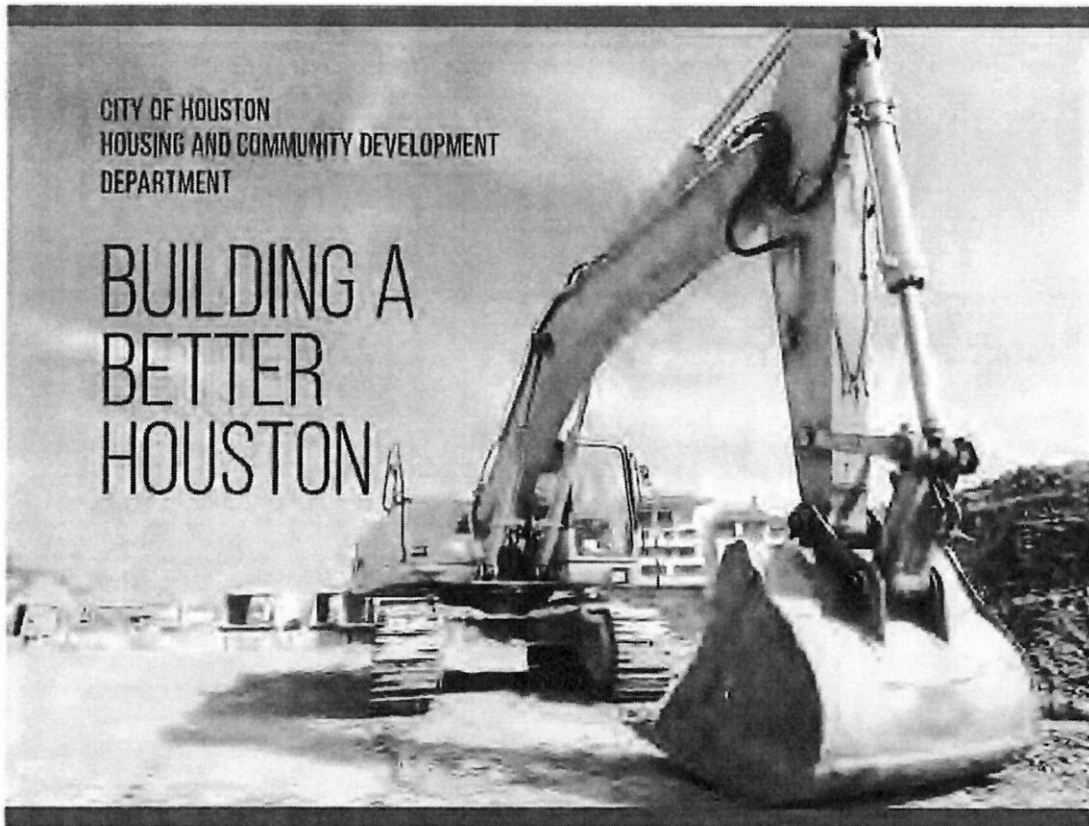
Date: _____

APPENDIX 8

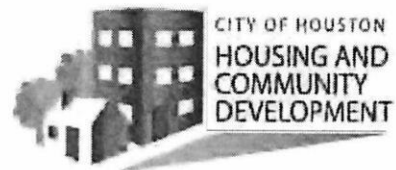
RESERVED

APPENDIX 9

CITY'S MWSBE, SECTION 3 AND LABOR STANDARDS REQUIREMENTS



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



www.houstontx.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)(i), 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 (ii)(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 locally 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 5.15 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(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.

(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 utter 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 sanctions pursuant to the Contract Work Hours and Safety Standards Act. (Public Law 81-54, 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, there 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)

Document 00808

**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

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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.

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(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.

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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.

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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

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- (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 owner-ship).

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 income.

(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.

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(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. Multi-family 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;

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(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 per cent or more owned by residents of the housing development or developments

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for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 per cent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 per cent 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

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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

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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

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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 refused 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.

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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

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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

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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

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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.

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(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

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(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:

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(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.

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APPENDIX 10
TEXAS ADMINISTRATIVE CODE

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<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
<u>RULE §11.306</u>	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 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

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the SCR adequately considers any 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.

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(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 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.
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)

Exhibit 2

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

Letterhead

APPENDIX 11

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

APPENDIX 11

Exhibit 3

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;
- 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

Exhibit 3

Date

APPENDIX 11

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))

Exhibit 6

NOTICE TO REAL PROPERTY OWNER/SELLER

Date: _____

Owner(s)/Seller(s): _____

Buyer(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))

Exhibit 7

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 guideline. It should be revised to reflect the project circumstances.

Site Occupant Record - Residential		Project Name: _____										
LOCALITY/AGENCY _____		Project #: _____										
Date of initial Interview: _____ Interviewer: _____		Relocation Case #: _____										
		Acquisition Parcel #: _____										
NAME OF OCCUPANT _____ ADDRESS _____ TELEPHONE NUMBER _____ CENSUS TRACT _____		CHECK: <input type="checkbox"/> FAMILY <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> OWNER <input type="checkbox"/> TENANT										
IS THIS ADDRESS LOCATED IN A HUD DESIGNATED RENEWAL COMMUNITY OR EMPOWERMENT ZONE? <input type="checkbox"/> YES <input type="checkbox"/> NO		DATE OF GENERAL INFORMATION NOTICE _____ EFFECTIVE DATE OF NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE _____ DATE PRIVACY ACT STATEMENT EXECUTED _____ (INCLUDE COPY OF NOTICES AND SIGNED PRIVACY ACT STATEMENT IN CASE FILE)										
DATE OCCUPANT FIRST OCCUPIED THIS DWELLING _____												
RACIAL/ETHNIC CLASSIFICATION	HOUSING COSTS AND CHARACTERISTICS OF DISPLACEMENT DWELLING											
(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	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">TENANT:</td> <td style="width: 40%;">OWNER:</td> </tr> <tr> <td>MONTHLY CONTRACT RENT \$ _____</td> <td>MONTHLY MORTGAGE PAYMENT (P&I) \$ _____</td> </tr> <tr> <td>AVERAGE MONTHLY UTILITY COSTS \$ _____</td> <td>AVERAGE MONTHLY UTILITY COSTS \$ _____</td> </tr> <tr> <td>MONTHLY HOUSING COSTS \$ _____</td> <td>REAL PROPERTY TAXES \$ _____</td> </tr> <tr> <td></td> <td>MONTHLY HOUSING COSTS \$ _____</td> </tr> </table>		TENANT:	OWNER:	MONTHLY CONTRACT RENT \$ _____	MONTHLY MORTGAGE PAYMENT (P&I) \$ _____	AVERAGE MONTHLY UTILITY COSTS \$ _____	AVERAGE MONTHLY UTILITY COSTS \$ _____	MONTHLY HOUSING COSTS \$ _____	REAL PROPERTY TAXES \$ _____		MONTHLY HOUSING COSTS \$ _____
TENANT:	OWNER:											
MONTHLY CONTRACT RENT \$ _____	MONTHLY MORTGAGE PAYMENT (P&I) \$ _____											
AVERAGE MONTHLY UTILITY COSTS \$ _____	AVERAGE MONTHLY UTILITY COSTS \$ _____											
MONTHLY HOUSING COSTS \$ _____	REAL PROPERTY TAXES \$ _____											
	MONTHLY HOUSING COSTS \$ _____											
	NO. OF ROOMS _____ NO. OF BEDROOMS _____ UNIT IS: <input type="checkbox"/> HOUSEKEEPING <input type="checkbox"/> NONHOUSEKEEPING											

APPENDIX 11

HOUSING REFERRALS												
Date	Address (Include Apt No.)	Census Track	Type of Unit			Size of Unit		Mo Rent + Est Avg Mo Utility Costs/Sales Price	Unit Inspd	Unit Avail Date	Low Income Or Minority Area?	Action on Referral (If refused, indicate why. Also indicate whether unit is representative comparable used as basis for pmt limit.)
			Rent	Sales	Subsidized	# of Rms	# of Bdrms					

REPLACEMENT DWELLING UNIT											
DATE OF MOVE _____		ADDRESS _____					CENSUS TRACT _____				
IS THIS ADDRESS LOCATED IN A HUD DESIGNATED RENEWAL COMMUNITY OR EMPOWERMENT ZONE? <input type="checkbox"/> YES <input type="checkbox"/> NO											
MONTHLY HOUSING COST (MHC)						<input type="checkbox"/> D. S. & S <input type="checkbox"/> NOT D. S. & S			RELOCATION PAYMENT(S)		
<input type="checkbox"/> RENTAL		<input type="checkbox"/> PURCHASE				DATE OF INSPECTION _____			TYPE <input type="checkbox"/> MOV. EXP. <input type="checkbox"/> REP		
MONTHLY RENT \$ _____	MORTGAGE PAYMENT (P&I) \$ _____				DATE OF REINSPECTION _____			<input type="checkbox"/> ACTUAL <input type="checkbox"/> RENTAL			
EST. AVERAGE MONTHLY	REAL ESTATE TAXES \$ _____				NO. OF ROOMS _____			<input type="checkbox"/> FIXED <input type="checkbox"/> DOWNPMT			
UTILITY COSTS \$ _____	EST. UTILITY COSTS \$ _____				NO. OF BEDROOMS _____			AMOUNT \$ _____ \$ _____			
TOTAL MHC \$ _____	TOTAL MHC \$ _____				(Include copy of Inspection Report in case file.)			DATE CLAIM FILED _____			
				SALES PRICE \$ _____				DATE CLAIM PAID _____			
								(Include copy of Claim Forms in Case File)			
IS UNIT IN AREA OF LOW-INCOME OR MINORITY CONCENTRATION? <input type="checkbox"/> YES <input type="checkbox"/> NO				TEMPORARY HOUSING DATE _____ REASON _____				APPEAL FILED: <input type="checkbox"/> YES <input type="checkbox"/> NO			
IS UNIT SUBSIDIZED? <input type="checkbox"/> YES <input type="checkbox"/> NO				ADDRESS _____ RENTAL \$ _____				IF YES, INDICATE TYPE:			
(Identify) _____				DATE OF MOVE TO PERMANENT DWELLING _____				<input type="checkbox"/> PAYMENT(S)			
				OUT-OF-POCKET EXPENSES PAID:				<input type="checkbox"/> HOUSING			
				MOVING EXPENSES \$ _____				<input type="checkbox"/> OTHER _____			
				INCREASED HOUSING COSTS \$ _____				(Include copy of Appeal in Case File)			

APPENDIX 11

Exhibit 9

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.

Exhibit 10

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."*

Exhibit 11

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

Exhibit 12

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*).

Sincerely,

(name and title).

App. 4-1 [10/06] 1378 CHG-6 Appendix 4

Exhibit 12

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."

[10/

Exhibit 13

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.

Exhibit 13

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.

Exhibit 13

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):

Exhibit 13

"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.

Exhibit 17

NOTICE TO VACATE FOR BREACH OF LEASE
Guide-form

(Date)

(Name of all residents)

(Street address and swelling unit number, if applicable)

Re: Notice to vacate for breach of lease

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: \$	
<p>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.</p> <p>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.</p> <p>Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.</p> <p>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).</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	

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	



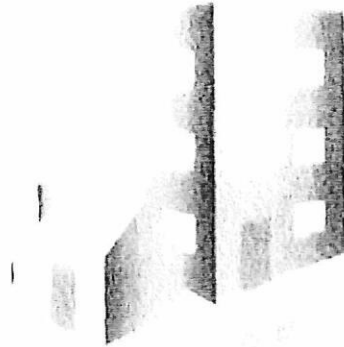
Texas General Land Office
Community Development and Revitalization
Form 11.22

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: \$	
<p>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.</p> <p>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.</p> <p>Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.</p> <p>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).</p> <p>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.</p> <p>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.</p> <p>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.</p>	

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**

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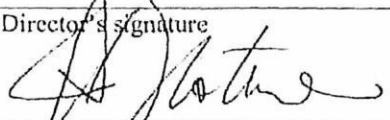
INTRODUCTION

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 1/5/2011
---	----------------------------------

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.

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- 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.

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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.

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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.

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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;

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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.

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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 I 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.

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**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)

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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.

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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.

MISCELANEOUS

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.

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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.

APPENDIX 14

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.

APPENDIX 14

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. 2009-2009-1043 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

' 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. [Signature]
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
CITY WORKFORCE 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]



777 West Putnam Avenue Greenwich, CT 06830
(203) 869-0900

February 26, 2021

Mr. Michael McGovern
666 Dundee Road, Suite 1102
Northbrook, IL 60062

Re: Lockwood South
Houston, TX
80 Units

Dear Mr. McGovern:

The Richman Group Affordable Housing Corporation ("TRG") is the sponsor of investment partnerships which provide equity capital for multi-family apartment complexes that are eligible for low-income housing tax credits ("Low-Income Housing Tax Credits") pursuant to Section 42 of the Internal Revenue Code of 1986 (the "Tax Code") by investing in limited partnerships and/or limited liability companies that own such apartment complexes.

You have advised us that an affiliate of Brinshore Development, LLC will form a single purpose entity to serve as the General Partner (the "General Partner") of Lockwood South Apts, LP, a Texas limited partnership (the "Partnership"), which intends to construct a multi-family apartment complex located in Houston, Texas (the "Apartment Complex").

TRG is pleased to provide you with this letter of intent for the acquisition by an affiliated investor member which will be sponsored by TRG ("Investor"), of a 99.99% membership interest in the Partnership, subject to the terms and conditions hereof. Upon the execution of this letter and receipt of a valid allocation of Low-Income Housing Tax Credits, TRG will commence its due diligence review. Only upon (i) the receipt of final investment committee approval, (ii) negotiation and execution of documentation acceptable to both parties and (iii) receipt of opinions of counsel (including corporate, tax and real estate) acceptable to the Investor, will the parties execute an amended and restated operating agreement of the Partnership in the Investor's standard form (the "Operating Agreement"), admitting the Investor to the Partnership. Subject to standard due diligence and the review of current financial statements, it is anticipated that the Brinshore Development, LLC (the "Guarantor") will guarantee the General Partner's obligations to the Investor. As of the date of this letter, TRG has no reservations about the sponsor and Guarantor of the Apartment Complex, however TRG and the Investor reserve the right to make continual evaluations of the sponsor and Guarantor until the satisfaction of all the conditions to Closing.

1. Financing: Financing of the Apartment Complex will be subject to Investor approval. You have informed us that the Apartment Complex will set aside 8 units at market rate rents, 4 units at 80% AMI utilizing income averaging for the entire site which will not exceed 55% (i.e. it is understood the Apartment Complex will utilize income averaging), and the Complex will receive:

- a) A construction loan in the amount of \$12,200,000 ("Construction Loan") with an interest rate of 4.50% for a term of 30 months which will be fully retired upon stabilization;
- b) a first mortgage loan from a conventional lender which is funded upon stabilization and retirement of the Construction Loan in the amount of \$5,198,000 with an interest rate not to exceed 4.50% per annum for a term of 20 years and payments based on a 35 year amortization schedule; and
- c) a subordinate loan of Disaster Relief funds in the amount of \$7,500,000 for a term of not less than 40 years, underwritten with an interest rate of 1.00% per annum compounding with payments based on cash flow;

To the extent that a change in the financing structure changes the amount of Low-Income Housing Tax Credits or tax losses, then capital contributions will be adjusted accordingly. The General Partner must deliver any required approval of the admission of the Investor to the Partnership prior to such admission (the "Closing"). The preparation, filing and processing of such application and all costs and expenses thereof, shall be the sole responsibility of the General Partner and/or the Partnership. All loan documents shall provide that notices of default and foreclosure shall be sent to the General Partner, as well as to the Investor.

Capital Contributions of the Investor: The "Capital Contribution" as set forth below reflects current market conditions. The Capital Contributions may be adjusted to reflect the market conditions at the time of closing. Subject to the terms and conditions set forth herein and in the Operating Agreement, the Investor will make capital contributions to the Partnership in the total amount of \$13,648,635 (the "Capital Contribution") which equates to a price per credit of \$0.91 for the Federal LIHTC. The Capital Contributions are based on 100% of the depreciable project costs will qualify for 30 year or MACRS depreciation methodologies (whichever is appropriate for the asset type) with no asset subject to the alternative depreciation method (i.e. method attributable to non-profit ownership).

Installment No. 1: \$2,047,295 (15%)

Either (a) paid at Closing or (b) paid in monthly installments on a draw basis as needed for development costs incurred.

Installment No. 2, No Earlier Than August 1, 2022: \$1,023,648 (7.5%)

Paid upon the latest of the following:

- (i) 75% completion of construction of the Apartment Complex as certified by the project architect and reconfirmed by a 3rd party construction inspector acceptable to the Investor;
- (ii) No earlier than August 1, 2022

Installment No. 3, No Earlier Than January 1, 2023: \$7,506,749 (55%)

Paid upon the latest of the following:

- (iii) 100% completion of construction of the Apartment Complex and receipt of certificates of occupancy for all units and receipt of all environmental remediation documentation satisfactory to the Investor (if any);
- (iv) Preliminary Low-Income Housing Tax Credit certification;
- (v) Receipt of a payoff letter from the contractor for the Apartment Complex (the "Contractor") which states that upon receipt of Installment No. 2 the construction contract will be paid in full by the Installment No. 2 or the Contractor will defer any amounts owed to it until receipt of Installment No. 3;
- (vi) Receipt of an estoppel letter from each lender to the Partnership and clear title search/title date down (if available);
- (vii) Receipt of certificates of insurance complying with the requirements described herein; and
- (viii) No earlier than January 1, 2023

Installment No. 4, No Earlier Than December 1, 2023 \$2,729,727 (20%)

- (i) Paid upon the achievement of 95% occupancy by tenants who qualify under Section 42 and who are paying rents (net of any concessions) at amounts which are at least equal to those set forth in the closing projections;
- (ii) Receipt of all environmental remediation documentation as required by local, state and federal requirements (if any);
- (iii) Receipt of an estoppel letter from each lender to the Partnership;
- (iv) Repayment of the Construction Loan and funding of the permanent loan and establishment of the Operating Reserve as described in Section 7E;
- (v) Achievement of "Breakeven Operations" (as defined below) and all conditions to the full funding of all project loans so that full repayment of the construction loan can occur and achievement of Final Closing (at a 1.20 debt service coverage ratio for 3 months using the of the actual of a 5% vacancy);
- (vi) Receipt of Recorded Extended Use Agreement;
- (vii) Receipt of the initial income qualification tenant files satisfactory to the Investor for 100% of the units;
- (viii) Receipt of final Low-Income Housing Tax Credit certification (Cost Certification); and
- (ix) No earlier than December 1, 2023.

Installment No. 5, No Earlier Than December 1, 2023

\$341,217 (2.5%)

Paid upon the latest of the following:

- (i) Receipt of form 8609; and
- (ii) No earlier than December 1, 2023.

Total Equity to Partnership (excluding amounts payable under Section 16 below): \$13,648,635

Installment No. 3 will only be released upon the achievement of Breakeven Operations. "Breakeven Operations" is generally defined as the earlier of the following: (i) the date upon which income from the normal operation of the Apartment Complex, received on a cash basis, for each of three (3) consecutive calendar months after permanent mortgage loan closing less all mandatory debt service payments for each month, exceeds all accrued operational costs for each month or, if the above is not verifiable for such three (3) month period, (ii) the date upon which income from the normal operation of the Apartment Complex (as reported under GAAP) equals or exceeds all operational costs (as reported under GAAP), as evidenced by an audited financial statement for a 12 month period prepared by the accountants of the Partnership. In addition, Breakeven Operations shall not have occurred unless, at the end of such three (3) month period, the Partnership shall have (i) sufficiently funded segregated reserves to pay one (1) year's property insurance premiums (minus any prepaid premiums on the existing insurance policy) and the next full installment of real estate taxes payable (minus any prepaid taxes with respect to such installment) and (ii) liquid assets not committed to the payment of any other expense or reserve fund in an amount sufficient to pay (a) one (1) month's mandatory debt service payment plus (b) any other accrued unpaid expenses.

2. Adjuster Clause: The Capital Contribution amount stated above is based upon your projection of an annual amount of Low-Income Housing Tax Credits of \$1,500,000 ("LIHTC") which in turn is based upon certain of the assumptions and projections stated herein. The actual amount of Low-Income Housing Tax Credits may in fact change after the determination of eligible and qualified basis. Accordingly, the Capital Contribution may be

adjusted when (i) final projections of the amount of Low-Income Housing Tax Credits are completed and/or (ii) upon or after actual completion of the Apartment Complex. Such determination will be made by no later than 4th Capital Contribution. To the extent such final projected amount of Low-Income Housing Tax Credits varies from the LIHTC, the Capital Contribution will be adjusted as set forth in the following paragraph and as will be more particularly set forth in the Operating Agreement.

If the final amount of Low-Income Housing Tax Credits ("Final LIHTC") is greater or less than the LIHTC then the Capital Contributions shall be adjusted so that the ratio of the capital contribution attributable to the Low-Income Housing Tax Credits divided by the Final LIHTC allocable to Investor is equal to 91.00% ("LIHTC Ratio"). Any upward adjuster will be capped at 5% of the aggregate amount of the initial Capital Contributions (the "Adjuster Cap"). However, in the case of an increase; such increase in capital contribution will take place only if the Investor has funds available, which are not committed otherwise. If the Investor does not have funds available to pay for the higher Low-Income Housing Tax Credits, then the Investor's interest in the Partnership will be adjusted downward accordingly, but in no event below a 90% interest. TRG may in its discretion endeavor to cause an affiliated investment partnership to purchase an interest in the Partnership but shall have no liability if it is unable to do so.

3. Timing Differences: In the event that if the actual Final Reported Credit for 2022 is more than 0.00% of the LIHTC or for 2023 is less than 100.00% of the LIHTC (or LIHTC as adjusted pursuant to paragraph 2 above) then the Capital Contribution of the Investor to the Partnership shall be either increased or decreased (a "Timing Change"), by an amount sufficient to maintain an Internal Rate of Return to the Investor equal to a to be determined percentage; such adjustment to be based upon the methodology set forth on Attachment A (assuming for this purpose that (i) the amount and timing of projected losses and General Partner deductions and (ii) the timing of the Capital Contributions will be fixed at the amounts shown in the projections attached to the Operating Agreement; except for the years in which tax loss information is available which will use the lesser of underwritten or actual tax losses). In the event that the Timing Change exceeds the then unpaid Capital Contribution of the Investor, the General Partner shall pay to the Investor, immediately upon demand, the amount by which the Timing Change exceeds such then unpaid Capital Contributions. The combined sum of any upward equity adjustment under Sections 3 and 4 shall be capped at 5% of the original underwritten Capital Contribution.

4. Cash Flow Distributions: Cash flow of the Partnership after expenses and debt service will be distributed, to the extent available, according to the following priority:

- First: to pay any credit adjuster due;
- Second: a priority distribution to the Investor in the amount of \$5,000 annually;
- Third: to replenish the Operating Reserve to the original amounts as set forth in Section 7E below;
- Fourth: to pay any deferred development fee to the General Partner;
- Fifth: to pay asset management, partnership management, and/or incentive management fees to the General Partner subject to proper documentation and tax counsel approval equal to 90% of the remaining cash flow; and
- Sixth: remaining amounts split 99.99% to the Investor, .01% to the General Partner.

5. Right of First Refusal/ Purchase Option: Commencing at the end of the 15-year compliance period and for a 3-year period, a qualified non-profit, designated by the General Partner, will be granted a right of first refusal to purchase the Apartment Complex. The purchase price shall be the minimum purchase price as set forth in Section 42(i) (7)(B) of the Internal Revenue Code. In addition, during the 3-year period commencing at the end of the 15-year compliance period, the General Partner or its designee shall have an option to purchase the Apartment Complex at the fair market value assuming the debt and taking into account the affordability restrictions on the Apartment Complex. Unpaid credit adjusters and recapture or priority distributions to the Investor will be included as an increase in the purchase price.

6. Sale or Refinance: Upon the sale of the Apartment Complex or a refinancing of the permanent mortgage loan, proceeds will generally be allocated in accordance with the following priority:

- First: Expenses of the sale and refinancing and satisfaction of underlying financing plus any other third-party obligations and debts followed by any amounts due the Investor;
- Second: Return of the outstanding balance of any operating deficit loans previously made by the General Partner (See Guarantees); and
- Third: Balance of proceeds split 10% to the Investor, 90% to the General Partner.

Notwithstanding the foregoing provisions of this Section 6, at the time of distribution of proceeds under this section, the amount distributed shall be adjusted such that the total amount of Net Cash Flow and proceeds from sale and liquidation distributed to the Investment Partner over the life of the Partnership equals 10% of all amounts distributed cumulatively under Section 4 and this Section 6.

7. Guarantees: The Guarantor shall guarantee the obligations of the General Partner under the Operating Agreement including, without limitation, the following (during the initial 15 year compliance period the Guarantor shall maintain liquidity of at least \$1,500,000 and net-worth of at least \$5,000,000 at all times):

(A) Against recapture of the Low-Income Housing Tax Credits for 15 years except for recapture caused by (i) subsequent changes in the Tax Code or (ii) transfers of the Investor's interest in the Partnership.

(B) The payment in full of all costs and expenses of the construction of the Apartment Complex in excess of the proceeds of all the construction period sources of funds and any operating deficits prior to the achievement of Breakeven Operations.

(C) To fund operating deficits for a five (5) year period (the "Operating Deficit Period") from the later of Breakeven Operations or funding of the permanent mortgage loan up to a maximum amount of \$362,469 which is sized to six months of operating expenses, replacement reserve and debt service (the "Operating Deficit Guaranty"). The funding of said operating deficits shall be treated as noninterest bearing loans to the Local Partnership repayable from Cash Flow as provided in paragraph five (5) above. The Operating Deficit Period shall be deemed extended until (x) the General Partner has provided the Investor with evidence that the Partnership has sufficient cash reserves to pay any accrued expenses as of the expiration of the Operating Deficit Period and (y) the Apartment Complex has achieved the "DSC Requirement" as hereinafter defined. The "DSC Requirement" means that the Apartment Complex has demonstrated a debt service coverage ratio of 1.15:1 for years four and five of the Operating Deficit Period. If the Apartment Complex has not demonstrated a 1.15:1 debt service coverage for such years, the Operating Deficit Period will be extended until the Apartment Complex demonstrated a 1.15:1 debt service coverage for two consecutive years. For purposes of the Operating Deficit Guaranty, the term "Operating Deficits" shall include amounts withdrawn from the reserve for replacements during such five (5) year period. Further, during the Operating Deficit Period, operating deficits may be first funded from the funded operating reserve subject to the limitations described in Section 7E and, provided that the operating reserve amount is replenished to \$362,469 at the expiration of the Operating Deficit Period. Notwithstanding anything to the contrary contained hereinabove, the Guarantors shall not be obligated to fund operating deficits to the extent that the outstanding aggregate principal amount of such operating deficit loans would exceed the maximum Operating Deficit Guaranty amount. A further assurance will be an agreement by the managing agent for the Apartment Complex, typically the General Partner or an affiliate, (the "Managing Agent") to (i) defer and accrue its management fee, if necessary, to prevent a default under the permanent mortgage loan and (ii) to defer its fee to the extent necessary to avoid an Operating Deficit. If the Managing Agent elects not to defer its fee pursuant to subparagraph (ii) above, it must send a notice to the General Partner and the Investor offering to resign. If no such notice is sent, the Managing Agent will be deemed to have ratified its agreement to defer its fee. If a notice is sent refusing to defer its fee, such refusal shall be grounds for removal of the Managing Agent.

(D) Repurchase of the Investor's interest in the Partnership by payment to the Investor of the full amount of the gross Capital Contribution paid to such date, if the General Partner fails to (i) place the Apartment Complex in service by December 31, 2023, (ii) complete Final Closing by June 30, 2024, (iii) achieve at least 70% of the aggregate projected LIHTC as set forth herein or (iv) achieve Breakeven Operations within 8 months of Substantial Completion (to be defined in the Partnership Agreement) of the Apartment Complex.

(E) The Partnership shall fund an operating reserve in the amount of \$362,469 (the "Operating Reserve") prior to or out of Installment No. 3. The Operating Reserve has been sized as 6 months of underwritten Operating Expenses, Debt Service and Reserves. Any portion of the reserve not controlled by the state housing agency shall be jointly controlled by the General Partner and the Investor and shall only be used to fund operating deficits. Upon the earlier of the end of the initial 15-year compliance period or the disposition of the property, any remaining funds in the Operating Reserve shall be released pursuant to Section 5. Withdrawals from the Operating Reserve shall be limited to \$24,165 per annum during the Operating Deficit Guaranty period with catch up withdrawals permitted on a cumulative basis. Furthermore, withdrawals during the Operating Deficit Guaranty period shall not reduce the General Partner's obligations under 7C.

8. Representations and Warranties: The General Partner shall provide the representations and warranties to the Investor more particularly set forth in the Operating Agreement and currently has no basis to believe that such representations and warranties cannot be given at Closing. The General Partner shall be obligated to recertify to the continued truth and accuracy of such representations and warranties at the time of each installment of capital contributions.

9. Duties and Obligations: The General Partner shall be obligated to assume the duties and obligations as are set forth in the Operating Agreement.

10. Legal Opinions: The General Partner shall cause the attorneys for the Partnership to provide the legal opinions more particularly set forth in the Operating Agreement.

11. Sale or Conversion: Beginning 15 years from the date of the closing of the permanent mortgage loan, if the Investor requests the General Partner to sell the Apartment Complex, the General Partner will consent, provided such sale meets the approval of the lender and applicable tax credit agency. In the event the General Partner does not consent to a sale at that time, the General Partner will be granted an option to purchase the Apartment Complex at fair market value (as restricted by the uses mandated by the lender and the Tax Credit Agency). In the event that the General Partner chooses not to exercise this purchase option, the Investor shall reserve the right to: (i) sell its interest in the Partnership to the General Partner for \$1 or (ii) transfer its membership interest in the Partnership to an affiliated entity.

12. Accountants and Financial Reporting: The "Accountants" for the Partnership shall be The Reznick Group or such other firm acceptable to the Investor. Financial information will be required to be submitted to the Investor by the 30th day after the end of each quarter, for the first three calendar quarters of each year. Such financial information may be unaudited and may be prepared by the Managing Agent. Annual audited financial statements and tax information will be required to be submitted to the Investor by the General Partner by February 15 of each year.

13. Removal Rights: The Investor shall have the right to remove the General Partner for cause as will be set forth in the Operating Agreement. No removal right without cause shall exist.

14. Indemnity: In the Operating Agreement the General Partner shall indemnify Investor and its officers, directors and affiliates for any untrue statement of a material fact or omission to state a material fact necessary to make any such statements, in light of the circumstances under which they were made, not misleading, by the General Partner or their agents set forth in any document delivered by the General Partner or their agents in connection with the acquisition of the Apartment Complex, the investment by the Investor in the Partnership and the execution of the Operating Agreement.

15. Reserve Requirements: The Partnership will be required to make an annual minimum deposit to a reserve for replacements in an amount equal to the greater of (i) \$250 per unit per year increasing annually by the CPI, or (ii) the amount utilized in the underwriting of the mortgage loans by the lenders. The Investor may require that additional reserves be funded to cover potential cash deficiencies. The Operating Deficit Guaranty shall be increased by amounts withdrawn from the reserve for replacements during the Operating Deficit Period.

16. Due Diligence: TRG and the Investor will have the opportunity to perform, and you and your professionals will assist us in, the customary due diligence necessary in the acquisition of the Apartment Complex and of the investment by Investor in the Partnership. As a condition of closing, the Partnership shall provide the Investor

information reasonably requested by the Investor, including without limitation, (i) market rental information, proving that the projected rents will be achieved and the rent up will occur within a reasonable absorption period, (ii) engineering report by an engineer acceptable to the Investor and (iii) a Phase 1 environmental report. Additionally, approval of this transaction is subject to Investor satisfaction and completion of due diligence (including site visit, review, and investment committee approval), and receipt by the Partnership of a Low-Income Housing Tax Credits reservation or allocation approval from the appropriate state or local agency.

17. Title Insurance: The General Partner shall provide, at Partnership expense, title insurance in favor of the Partnership in an amount not less than the sum of (i) all mortgage loans, and (ii) the amount of the Capital Contribution with only those exceptions as may be approved by Investor.

19. Execution of Operating Agreement: As a condition to the Closing, the General Partner will execute the Operating Agreement and any related documentation necessary to complete the transaction and the Guarantor must execute the Guaranty.

20. Hazard and Liability Insurance: As a condition to receipt of Installment No. 1 of Capital Contributions, the Partnership shall deliver evidence of hazard insurance from carriers acceptable to the Investor, in an amount equal to the replacement cost of the apartment improvements. The hazard insurance must include endorsements for inflation adjustment and code upgrade coverage. Liability insurance shall be in the amount of not less than \$5,000,000.

21. Escrows: To the extent not required by any mortgage lender, the Partnership shall maintain funds in a segregated escrow account, in an amount sufficient to pay all real estate taxes and insurance premiums when due.

22. Payment and Performance Bond or Letter of Credit: The Contractor shall provide one of the following (i) payment and performance bonds in form and substance satisfactory to Investor, in the full amount of the general contract naming the Partnership as obligee issued by a bonding company acceptable to Investor (ii) a letter of credit in the amount of not less than 15% of the general contract issued by a bank acceptable to Investor or (iii) a guarantee of the Contractor (or its principal) with a net worth of not less than \$5,000,000.

23. Brokers. Any fees due to any broker involved in this transaction will be the responsibility of the General Partner. By executing this letter of intent, you represent and warrant that no broker has been involved in the negotiations among the General Partner, its principals and TRG. You further acknowledge and agree that neither TRG nor the Investor shall be responsible for the payment of any brokerage fees in connection with the Investor's investment in the Project unless otherwise specifically agreed to in writing by TRG.

24. Management Agent: It is understood that the Management Agent will be a firm with substantial demonstrated satisfactory experience managing LIHTC, RAD and other mixed income housing. The Management Agent will need to be adequately insured and in good standing with local, state and federal requirements. The Management Agent will be permitted to collect an initial fee of \$36.75 per unit per month with future increases subject to CPI. A complete set of obligations for the Management Agent as required by the Investor shall be identified in the Operating Agreement.

25. Development Fee: The General Partner will be permitted to earn a development fee up to \$2,695,914 (or as permitted by any applicable agency) of which the underwritten cash portion of the development fee is \$2,299,133 and the underwritten deferred portion is \$396,781. The General Partner will be permitted to pay the cash portion of the development fee as outlined below ("Base Scenario").

a. Upon the satisfaction of the conditions of Installment No. 1:	\$459,826 (20.00%)
b. Upon the satisfaction of the conditions of Installment No. 2:	\$459,826 (20.00%)
c. Upon the satisfaction of the conditions of Installment No. 3:	\$1,038,264 (45.16%)
d. Upon the satisfaction of the conditions of Installment No. 4:	\$341,216 (14.84%)

In the event the development budget for the Apartment Complex changes prior to Closing, then the permitted schedule of cash development fee payments may be revised provided the same percentages outlined above are maintained and provided further the development budget has been updated to reflect the then current sources and uses (i.e. the projected cash development fee is updated based on all then known project sources

and uses including updates for any project savings or increases in development expenses and any change in project sources).

If the above is acceptable to the General Partner, please execute a copy of this letter and return it to the Investor. In the event that Investor is not in receipt of an executed copy of this letter within thirty (30) days, this letter shall be considered withdrawn and shall be of no further force or effect.

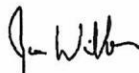
Upon the Investor's receipt of a fully executed copy of this letter, the Investor will commence the necessary action to deliver to you a copy of the proposed Operating Agreement and you shall be bound by all of the terms and provisions hereof. If prior to the expiration of the due diligence period Investor agrees to proceed with the transaction, but notwithstanding such agreement, the General Partner (i) fails to negotiate the Operating Agreement or other closing documents in good faith and/or (ii) offers the membership interest contemplated hereby to a third party, then the General Partner shall be obligated to reimburse Investor and/or TRG for all fees, costs and expenses incurred by Investor and/or TRG in connection with this transaction, including without limitation, all legal fees and disbursements, engineering and other professional fees, site inspection fees, market study fees, appraisal fees, background investigation costs, and other due diligence costs and expenses.

The Capital Contributions set forth in Paragraph 2 above may be recalculated or changed prior to the Closing to reflect rising interest rates or other changing market conditions and the Investor's then – current yield requirements. This letter shall be governed by and construed in accordance with the internal laws of the State of Connecticut. This agreement shall not create any liability on the part of TRG or the Investor. All rights and obligation of the Investor shall be set forth in the Operating Agreement and shall not be binding on the Investor until the Investor delivers a fully executed copy of the Operating Agreement to the General Partner.

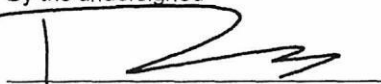
Notwithstanding anything to the contrary contained herein, the provisions of this letter represent the entire understandings of TRG, the Investor, the General Partner and/or the Partnership with respect to the matter hereof, and all prior understandings, agreements and representations with respect thereto whether written or oral are superseded hereby and merged herein. None of the provisions of this letter may be waived or modified unless such waiver or modification is in writing and signed by the parties hereto and approved by TRG's counsel. No oral agreements shall ever be binding on TRG and/or the Investor.

Sincerely,

The Richman Group Affordable Housing Corporation

By: 
Jason Wilber
Executive Vice President

Agreed to and accepted as of
5/7, 2021

By the undersigned




Capital One, National Association P: 281-881-3600
c/o Dan Miller capitalone.com

February 22, 2022

Richard Sciortino, Principal
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, IL 60062

CONFIDENTIAL

Re: Lockwood South, Houston, TX

Dear Mr. Sciortino:

Capital One, National Association (together with its affiliates, "Capital One") is pleased to provide you with its proposal as outlined in the attached summary of terms and conditions (this letter together with the exhibits attached hereto, the "Proposal") to provide financing for your proposed development, Lockwood South (the "Development").

This Proposal contains an outline of suggested terms only, and it does not represent a commitment by Capital One or create any obligation whatsoever on Capital One's part. It is for discussion purposes only, and the outlined terms have not received final approval by the appropriate Capital One lending authorities. This Proposal replaces and voids any and all previous financing proposals by Capital One for the Development.

Based on the information you have provided, the Development appears feasible, and Capital One is willing to begin due diligence on the following terms.

The proposed terms and conditions below (including capitalized terms in **bold**) are supplemented by those set forth in Exhibit A hereto.

BORROWER: A formed or to-be-formed limited partnership or limited liability company will act as the **Borrower**.

TYPE and PURPOSE of LOANS: The **Construction Loan** is a non-revolving multiple-draw loan advanced to finance a portion of the **Property Improvements** and to bridge the LIHTC equity pay-ins or other subordinated financing. Closing of the **Construction Loan** will be subject to satisfaction of the conditions set forth in Exhibit B.

Advances under the **Construction Loan** will be made no more frequently than monthly, with the funding based upon the percentage-of-completion for actual work-in-place as approved by Capital One and its construction consultant. Retainage will be withheld on each advance and the terms of the construction contract between the Borrower and the Development's general contractor (the "General Contractor") must be acceptable to Capital One. **Retainage Terms** and **Subcontractor Buyout Requirements** with the General Contractor to be approved by Capital One. Funds will be deposited into the Borrower's construction account held by Capital One. If requested, funds may be wired from that account; however, scheduled wire charges may apply.

The **Permanent Loan** will be provided by the **Permanent Loan Lender**. Certain amounts outstanding under the Construction Loan will be repaid by Permanent Loan Lender, who will make a permanent loan in accordance with and subject to the conditions of the **Permanent Loan Take Out Commitment** at the end of the construction term (the "Conversion").

COLLATERAL; ETC.: First lien deed of trust/mortgage on the **Borrower's** interest in real property and improvements (whether fee simple or leasehold). Assignments and/or first lien security interest in rents and leases, general partner/managing member's interest, low income housing tax credits, construction contract, architect's contract, management contract, development agreement, social service contract, FF&E and all accounts including escrow, reserve, and operating accounts.

The **Construction Loan** will become due upon sale of, or refinancing of any debt incurred in respect of, the Development property or **Property Improvements**.

AFFORDABILITY RESTRICTIONS: The Development will be affordable to tenants under the **Affordability Restrictions** and may include any **Operating Subsidies** awarded to the **Borrower**.

AMOUNT OF LOAN: The maximum amount of the **Construction Loan** (during the construction phase) shall be the lesser of:

- The **Construction Loan** amount set forth on Exhibit A, and
- Up to 80% of the sum of the value of the Development property including the as completed and stabilized value including rent restrictions, inclusive of property tax abatement (if applicable) and the value of the tax credits at the lesser of appraised value or the accepted purchase price.

LOAN FEE: The **Construction Loan Origination Fee** on the full amount of the **Construction Loan**. All such fees are due at the closing of the Construction Loan and are nonrefundable.

CONSTRUCTION LOAN INTEREST RATE and PAYMENTS: Rates quoted are predicated on the assumption that all operating accounts, construction accounts, reserve accounts and any other deposit accounts of the Borrower and the Development, including escrow accounts, will be maintained with Capital One for the entire period that the **Construction Loan** is outstanding. If circumstances are such that this cannot be achieved, pricing may vary.

For the **Construction Loan**, the rate will be determined using **Construction Loan Spread** plus an **Index** which will re-price monthly. In no instance shall the **Index** be less than the **Index Floor**. Indicative loan pricing for today's date can be found in Exhibit A. Although the **Index** is currently based on LIBOR, a substitute Index will be selected and implemented in the loan documentation accordance with the recommendations of the Alternate Rate Reference Committee of the Federal Reserve Board and the Federal Reserve Board of New York. For underwriting purposes, the interest reserve will be sized assuming a **Construction Minimum Rate**.

During construction, interest-only payments will be due monthly. Interest shall be calculated utilizing a 360-day basis for the actual number of days principal is outstanding.

CONSTRUCTION LOAN TERM and EXTENSION: The **Construction Loan Term** is inclusive of the **Construction Completion Date**, which shall not be extended more than 60 days due to force majeure and, in any event, shall not be extended beyond the placed-in-service date. Construction shall commence no later than 30 days following the **Anticipated Closing Date**.

If the construction period is extended, there will be an **Extension Fee** based on the amount of the **Construction Loan** extended, including unfunded amounts that will remain available after extension. An **Extension Period** may be authorized subject to satisfaction of conditions including, but not limited to:

- compliance with all placed-in-service requirements
- lien-free completion
- adequate interest reserve
- all scheduled equity due at that point having been funded and the **Construction Loan** repaid to an estimated amount of **\$6,700,000** [amount will be based on the final Construction Loan amount as determined and sized during underwriting less application of proceeds from any Investor equity installment scheduled to pay down the Construction Loan prior to Conversion net of any developer fee paid from the installment, if applicable]
- receipt of extension for all additional financing sources and permanent commitments, as necessary
- no event of default in any documents governing any credit facility, subordinate debt, grant, equity or other binding agreements governing the borrower, Development or guarantor
- **Extension Period Physical Occupancy**
- **Extension Debt Service Coverage Ratio**
- **Extension Fee** payment

Additional extension criteria may be added upon changes in the financing structure and/or receipt of the loan/equity documents for other lenders/financing partners. If the extension is exercised, the Borrower will pay any and all reasonable costs related to the extension, including cost for an updated appraisal, if required.

GUARANTIES: Capital One will have full recourse to the Borrower, as-well-as a payment and performance guaranty from (i) the general partner/managing member of the Borrower and (ii) each **Guarantor** listed on Exhibit A which shall be satisfactory to Capital One following due diligence (collectively, the "Guarantor Parties"). The Guarantor Parties may be subject to **Additional Covenants**. In addition, **Lien-Free Completion Guaranties** will be required from the Guarantor Parties listed on Exhibit A.

The Borrower and the Guarantor Parties will jointly and severally provide environmental indemnification which shall survive the Conversion.

EQUITY: Total LIHTC Contribution will come from the sale of tax credits. Equity terms must be acceptable to Capital One and are subject to credit approval.

Except for certain costs approved by Capital One to be paid at closing of the **Construction Loan** from the proceeds of equity, the equity investor shall deposit the equity contribution amount in an account of Borrower held at and controlled by Capital One. The funds in that account will be disbursed by Capital One to: (i) pay for approved budgeted items and/or applied to the **Construction Loan** in accordance with the loan documents, and (ii) pay down and/or repay the **Construction Loan** after construction completion to the amount of the Permanent Loan less the amount of any Additional Sources, if applicable. Capital One will have no obligation to make an advance of the **Construction Loan** unless and until Capital One has disbursed any installment of equity proceeds then on deposit with Capital One (as will be more particularly provided for in the applicable loan documents).

ADDITIONAL SOURCES OF FINANCING: For all **Additional Sources** included in the financing structure during the Construction Loan Term, Capital One must receive a commitment in form and substance satisfactory to Capital One as a condition to closing, and all amounts owing to the Additional Sources must remain subordinate on terms satisfactory to Capital One to the amounts outstanding under the **Construction Loan** until paid in full and terminated. There will be a **Servicing Fee** to administer the Additional Sources during construction. An intercreditor agreement may be required.

CASH DEVELOPER FEE: **Cash Developer Fee** payments will be subordinate to the **Construction Loan** and will be paid out in accordance with a schedule to be agreed during underwriting.

CONTINGENCIES: Capital One requires a minimum **Hard Cost Contingency** and **Soft Cost Contingency** within the budget. Should the applicable finance agencies not permit the such contingencies, then a portion of **Cash Developer Fee** will be escrowed at closing of the Construction Loan in the amount of such contingencies less what is included in the budget. The escrowed **Cash Developer Fee** will be released with the completion equity installment.

PAYMENT AND PERFORMANCE BONDS OR LETTERS OF CREDIT: The General Contractor will provide payment and performance bonds during construction, provided by a surety with at least an AM Best rating of "A" and acceptable to Capital One in its sole discretion. However, if the General Contractor is unable to provide bonds, or uses a surety company with a lower rating, Capital One is willing to consider a letter of credit in favor of Capital One for no less than 15% of the total amount stated under the construction contract from a highly-rated issuer acceptable to Capital One in its sole discretion.

THIRD-PARTIES: Third-party firms including, but not limited to, the General Contractor, property manager, consulting engineer, and environmental consultant are subject to Capital One's review and approval.

NET OPERATING INCOME: **Net Operating Income** will be treated as set forth on Exhibit A. All Net Operating Income will be held in a deposit account at Capital One.

EXPENSES and GOOD FAITH DEPOSIT: Underwriting, closing, and any other expenses must be reimbursed to Capital One whether or not the Construction Loan closes. Customary expenses include but are not limited to: appraisal, plan & cost review, flood search, legal fees or costs, insurance consultant review, and construction signage.

Please include the **Good Faith Deposit** when you return a countersigned copy of this Proposal to us. Within three weeks following the closing of the Construction Loan, the Good Faith Deposit (including any additional deposits) will be returned provided that Capital One has confirmed all third-party costs have been paid from the closing requisition. The Good Faith Deposit should not be included as a line item in the development budget. If for any reason the Construction Loan does not close, any third-party or legal costs billed to Capital One will be deducted from the Good Faith Deposit (including any additional deposits) and any remaining portion will be refunded. Additional deposits may be required for continued underwriting and legal document drafting if incurred costs and current cost and fee estimates exceed the Good Faith Deposit prior to final credit approval and closing.

PATRIOT ACT DISCLOSURE: We hereby notify you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "**PATRIOT Act**"), Capital One may be required to obtain, verify and record information that identifies the Borrower and each Guarantor Party, which information includes the name,

address, tax identification number and other information regarding the Borrower and each Guarantor Party that will allow Capital One to identify the Borrower and each Guarantor Party in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act.

ECOA NOTICE: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this Capital One is the Consumer Financial Protection Bureau, 1700 G Street NW, Washington DC 20552. If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact the office of Capital One listed at the top of this letter within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

CONFIDENTIALITY: The contents of this Proposal may not be shared with any third party without Capital One's prior written consent, except for potential equity and subordinated debt investors, professional advisors, management and regulatory or other governmental bodies on a need-to-know basis. All persons who are informed of the contents of this Proposal also shall be informed that such contents are confidential and cannot be disclosed without Capital One's prior written consent.

WAIVER OF JURY TRIAL: THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS PROPOSAL, THE CONSTRUCTION LOAN, THE PERMANENT LOAN AND ANY OTHER TRANSACTION RELATED HERETO OR THERETO. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

ACCEPTANCE; EXPIRATION: To accept this Proposal, the Proposal must be countersigned and returned to us along with the Good Faith Deposit within seven (7) business days of the date of the letter or the terms of this letter shall become null and void. Once accepted, if the closing of the Construction Loan does not occur by the Anticipated Closing Date, or either party notifies the other in writing that such party does not intend to close on substantially similar terms outlined in this Proposal, then this Proposal shall become null and void.

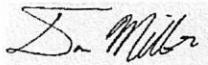
Notwithstanding the foregoing, the provisions of this letter set forth under the headings "Expenses and Good Faith Deposit", "Confidentiality" and "Waiver of Jury Trial" shall survive the termination or expiration of this Proposal and shall remain in full force and effect regardless of whether the Construction Loan closes.

It is hereby acknowledged and understood that this Proposal is not a commitment to lend, nor is it intended to be a letter of commitment, and Capital One is not bound to any of the terms and conditions herein outlined. The terms of the financing are not set until formally approved by Capital One and the financing documentation has been executed by Capital One, the Borrower and the other parties thereto.

[signature page follows]

It is my sincere pleasure to make this Proposal to you. I look forward to your acceptance and to our developing relationship. Please signify your understanding of the above by signing and returning a copy of this Proposal letter together with the Good Faith Deposit within seven (7) business days.

Sincerely,



Dan Miller
Director
Capital One, National Association

Accepted and Agreed:

Brinshore Development, LLC

By: _____

Name:

Title:

Date:

EXHIBIT A

The terms and conditions set forth below supplement those set forth in the Proposal letter

Borrower	Lockwood South Apts, LP
Property Improvements	The new construction of a 77-unit affordable housing development for families. The unit design includes a mix of one, two, and three-bedroom units within one 4-story building.
Affordability Restrictions	<ul style="list-style-type: none"> • 8 units restricted to 30% of AMI • 29 units restricted to 50% of AMI • 31 units restricted to 60% of AMI • 14 unrestricted units <p>*A minimum 15% discount to market is required</p>
Operating Subsidies	N/A
Construction Loan	Up to \$11,100,000
Retainage Terms	10% retainage will be withheld on all draws
Construction Loan Origination Fee	100 bps
Construction Loan Spread	385 bps
Index	One Month Term SOFR – 5 bps as of 2/22/2022,
Index Floor	75 bps
Construction Minimum Rate	Construction Loan Spread + (Greater of Index and Index Floor) + minimum 100 bps underwriting cushion.
Rate Lock Fee	N/A
Construction Loan Term	30 months
Construction Completion Date	18 months of the date of close (a minimum 3-month cushion to the PIS deadline is required)
Extension Fee	50 bps
Extension Period	Up to one,3-month extension option, not to extend beyond maturity date of the Permanent Loan.
Extension Period Physical Occupancy	92.5%, for one month prior to maturity
Extension Debt Service Coverage Ratio	1.15x for one month prior to maturity
Guarantor 1	Brinshore Development, LLC
Guarantor 2	Buffalo Bayou Partnership (limited to the dollar amount of their respective portion of total cash developer fee which is anticipated to be 25%)
Guarantor 3	TBD, if applicable
Subcontractor Buyout Terms	50% of total trade costs under the general contract shall be documented by executed subcontracts by the closing, and an additional 30% of total trade costs shall be covered by executed letters of intent for subcontracts by the closing, which subcontracts shall be executed within 60 days of the closing, such that in aggregate 80% of the trade costs are committed under executed subcontracts or letters of intent reasonably satisfactory to Capital One at closing.

Permanent Loan Lender	TBD (or any other lender determined by Borrower and acceptable to Capital One)
Permanent Loan	<p>A loan by Permanent Loan Lender in an amount up to \$3,600,000. The Permanent Loan amount is expected to be sized to a minimum Debt Service Coverage Ratio of 1.15x and a maximum Loan to Value of 85%.</p> <p>The term of the Permanent Loan is expected to be 15 years from Conversion based on a 35-year amortization schedule. The Permanent Loan interest rate will be locked prior to or at closing of the Construction Loan.</p> <p>A Minimum Permanent Loan Rate Cushion of 25 bps shall be used for underwriting purposes.</p>
Permanent Loan Take Out Commitment	<p>A forward take-out commitment in respect of the Permanent Loan by Permanent Loan Lender, which must be acceptable to Capital One and executed prior to closing of the Construction Loan. The commitment will be documented by means of a tri-party agreement between Capital One, the Borrower and the Permanent Loan Lender. This agreement will establish:</p> <ul style="list-style-type: none"> • a firm commitment to finance the Development property, subject to achievement of satisfactory completion and any rental achievement goals that apply; • a fixed rate for the permanent financing; and • a commitment expiry not earlier than the Construction Loan maturity.
Additional Covenants	Minimum Liquidity of \$2MM and Net Worth of \$7.5MM
Lien Free Completion Guaranties	General partner/managing member of the Borrower, and all Guarantors
Total LIHTC Contribution	\$13,723,628
Additional Source 1 (Subordinate Debt)	City of Houston CDBG DR Loan, \$9,500,000; \$8,550,000 (90%) funded at close and/or prior to the Construction Loan, less a 10% retention hold back to construction completion. This loan has no required debt service payments during construction; upon stabilization, payments made from residual receipts subject to available cashflow.
Additional Source 2 (Subordinate Debt)	NHTF \$1,300,000. \$1,170,000 funded at close, less a 10% retainage hold back to construction completion. This loan has no required debt service payments during construction; upon stabilization, payments made from residual receipts subject to available cashflow.
Hard Cost Contingency	5% of total construction contract

Soft Cost Contingency	5% of all soft costs (less Origination Fees, Interest Reserve, Developer Fee, and Capitalized Reserves)
Servicing Fee	N/A
Cash Developer Fee	Budgeted Developer Fee totals \$2,863,413. Cash Developer Fee payments are subject to final underwriting and credit approval.
Net Operating Income	During the construction phase, distributions of net operating income (income after expenses) are prohibited and the Borrower will report operations and will pay interest with any net operating income prior to utilization of the interest reserve.
Good Faith Deposit	\$20,000
Anticipated Closing Date	4/1/2022. If the Anticipated Closing Date exceeds 120 days from the date of this Proposal, pricing and terms may be subject to change.

EXHIBIT B

CONDITIONS TO CONSTRUCTION LOAN CLOSING

The conditions to closing of the Construction Loan shall be customary for transactions of this nature and appropriate for this particular transaction, including but not limited to:

1. All agreements with respect to the organization of Borrower and the equity investors shall be in form and substance satisfactory to Capital One and all equity contributions to the Borrower required at closing shall have been funded to an account at Capital One.
2. No additional debt shall be secured by the Development property other than the Additional Sources.
3. All money funded for acquisition costs prior to Conversion must be the lower of the cost or the value of the land based on an appraisal approved by Capital One.
4. All due diligence and underwriting have been completed to the satisfaction of Capital One (including the approval of the credit officer and/or credit committee).
5. All representations and warranties under the financing documents shall be true and correct in all material respects and after giving effect to the closing, there shall be no default or event of default under the financing documents.
6. Delivery of the following items to Capital One:
 - a. Financial statements, tax returns, operating statements, rent rolls or related documentation requested by Capital One for the Development, the Borrower and the Guarantors, as applicable.
 - b. Executed loan documents and other documents executed in connection therewith which shall be mutually acceptable to Borrower and Capital One.
 - c. A Phase I environmental survey dated within six months of the Anticipated Closing Date on which Capital One is entitled to rely. At the sole discretion of Capital One, additional environmental due diligence may be required, including but not limited to a Phase II environmental survey, asbestos and/or lead paint tests; provided that Capital One will consider using an updated version of existing Phase I if acceptable to Capital One's in-house environmental risk manager.
 - d. Management agreement and management plan from an approved third-party management company reasonably acceptable to Capital One.
 - e. Commitment for title insurance, issued by a title company acceptable to Capital One, covering the Property Improvements, together with the payment of premiums necessary for the title company to issue a mortgagee's policy of title insurance, with respect thereto, in the amount of the Construction Loan, together with all endorsements thereto as required Capital One.
 - f. Evidence that the Property Improvements are not located in a flood prone area.

- g. A market and feasibility study for the Property Improvements prepared by an approved market consultant.
- h. Evidence that the Development will have adequate parking per zoning requirements.
- i. Pro-forma operating statement for the Development.
- j. Survey of the Development that includes any easements or licensing agreements in place.
- k. Evidence of fire, hazard, flood (as applicable), builder's risk, workman's compensation, and all other insurance as will be required by the loan documents, each naming Capital One as loss payee or mortgagee.
- l. Receipt and approval by Capital One of a final construction budget, a construction schedule and a draw schedule, together with a third-party plan and cost review performed by a third party acceptable to Capital One which shall, among other things, verify the adequacy of such construction budget. The cost breakdown should clearly indicate those line items to be funded by the equity contributions and the timing thereof.
- m. A recent (within 30 days prior to closing) set of lien searches indicating that the Development and the Borrower are free and clear of all security interests (or will be at the time of closing).
- n. The Borrower's partnership agreement or operating agreement, as applicable, and all amendments and modifications thereto, and copies of any notes, guarantees, and other instruments and agreements issued or executed pursuant thereto.
- o. Certified copy of Borrower's and its general partner's or managing member's and each Guarantor's charter documents, certificates of good standing as of a recent date and evidence of corporate authorization to enter into the transaction contemplated by this Proposal and the loan documents in form and substance acceptable to Capital One.
- p. Any deed containing reversionary rights or project specific covenants must be in form and substance acceptable to the Lender, including any Lender protections that are deemed necessary by the Lender.
- q. If applicable, the purchase agreement or ground lease of the Development property and all landlord estoppel letters as may be required by Capital One. Any leasehold interest in the Development property subject to a ground lease shall be subordinate to the Construction Loan. Within the lease, Capital One shall require prohibition of lease termination or transfer of fee simple interest without the Capital One's consent, transferability to Capital One under same terms and assignment of the lease to a new party, and obligation from the landlord to send Capital One notice of any defaults under the lease and grant Capital One certain rights to cure.
- r. Opinions of counsel with respect to the Borrower, the Guarantor Parties, and such other entities reasonably requested by Capital One, and covering such matters as Capital One shall deem reasonably necessary or desirable in connection with the transaction.

- s. Current plans and specifications for the Development.
- t. The contract between Borrower and the Development's architect, together with an agreement from such architect consenting to the assignment of the plans and specifications prepared by the architect to Capital One and providing for the subordination of all statutory and contractual liens and claims of the architect against the Development.
- u. The general construction contract between Borrower and the General Contractor (which shall be a fixed price/stipulated sum or guaranteed maximum price contract consistent with the budget approved by Capital One), together with an agreement from the General Contractor consenting to the assignment of such contract to Capital One, and providing for the subordination of all statutory and contractual liens and claims of the General Contractor against the Development.
- v. All management contracts, operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Development. Capital One reserves the right to require that all such contracts and agreements be conditionally assigned by Borrower to Capital One, and to further, at the option of Capital One, require that such assignments be acknowledged by the contracting third parties.
- w. Evidence in the form of letters from the appropriate provider or from the project engineer, that public water, sanitary and storm sewer, electricity, gas, and other required utilities are available to the Development (as clearly identified in said letters) and in quantities sufficient for the successful operation of the Development. All utility lines must enter the Development through adjoining public streets or, if passing through adjoining private land, do so in accordance with recorded public or private easements satisfactory in form and content to Capital One.
- x. Evidence that the **Permanent Loan Take Out Commitment** has been executed and would achieve the **Debt Service Coverage Ratio** as outlined in Appendix A.
- y. Evidence that the Development and all planned improvements and intended uses will fully comply with all applicable deed restrictions, laws, regulations, and zoning requirements, and copies of all building and grading and demolition permits, operating permits, licenses, consents and approvals, which building and grading and demolition permits, operating permits, licenses, consents and approvals shall be conditionally assigned to Capital One.
- z. Executed rental agreements by and allocating agency for any operating or rental subsidies including project-based vouchers, public housing assistance, veterans' assistance or any other underwritten revenue.
- aa. Such other financial information and other documents as shall be required by the loan documents.
- bb. All documentation and other information required by the policies and procedures of Capital One to comply with applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act.

EXHIBIT C
PRELIMINARY CONSTRUCTION BUDGET
[Attached]



Lockwood South Budget - Feb. 09, 2022 Update

DIV	Cost Code	DESCRIPTION	BUDGET UPDATE (Accepted PCS Log Items) 02/09/22	Cost / Unit	Cost / NRSF	Cost / GSF	Scope Clarifications / Assumptions
SITE WORK							
31	V	Earthwork	\$354,563	\$4,432	\$4.98	\$3.62	Cost Consideration Item based on haul-off of spoils being plac. on the adjacent as indicated storm drainage spoils per K-H plan dated 11-15-2021
33	V	Site Utilities (Wet and Dry)	\$332,731	\$4,159	\$4.67	\$3.40	
31	V	Erosion Control	\$15,800	\$198	\$0.22	\$0.16	
03	V	Site Concrete - Paving, Walks, Site Footings	\$436,928	\$5,462	\$6.14	\$4.46	
32	V	Fences and Gates	N. I. S.	\$0	\$0.00	\$0.00	
32	V	Misc Site + Pavers	\$114,212	\$1,428	\$1.60	\$1.17	Paver Scope Included
		Site Work - Total	\$1,254,234	\$15,677.92	\$17.61	\$12.81	
BUILDINGS							
32	V	Termite Treatment	\$3,357	\$42	\$0.05	\$0.03	
03	V	Concrete Turn Key (incis bldg footings, piers, slabs foundations, CP elevated slabs)	\$286,269	\$3,578	\$4.02	\$2.92	
03	V	Lightweight Concrete / Gycrete	\$176,504	\$2,206	\$2.48	\$1.80	
04	V	Masonry Turn Key	\$460,700	\$5,759	\$6.47	\$4.70	
05	V	Metal Stairs, Ralls and Misc Steel (no fencing)	w/ Metals Allowance	\$0	\$0.00	\$0.00	w/ Steel Allowance
05	V	Steel Carpents	\$0	\$0	\$0.00	\$0.00	
06	V	Framing - turnkey	\$3,382,358	\$42,279	\$47.49	\$34.53	
06	V	Finish Carpentry (Trim, Doors, Hardware, Shelving,)	\$598,185	\$7,477	\$8.40	\$6.11	
07	V	Insulation	\$227,429	\$2,843	\$3.19	\$2.32	
07	V	Damp / Waterproofing	\$27,768	\$347	\$0.39	\$0.28	Includes W.P. Consultant
07	V	Roofing - TPO & SSMR	\$269,394	\$3,367	\$3.78	\$2.75	SSMR not included in Original Budget
07	V	Gutters and Downspouts	\$15,200	\$190	\$0.21	\$0.16	CMC Budget
07	V	Caulking & Sealants	\$54,309	\$679	\$0.76	\$0.55	
08	V	Overhead Doors	\$15,355	\$192	\$0.22	\$0.16	
08	V	Storefront / Glass & Glazing	\$207,593	\$0	\$0.00	\$0.00	Includes Accepted PCS Log Item # 08
08	V	Windows	\$203,915	\$2,549	\$2.86	\$2.08	Includes Accepted PCS Log Item # 02
09	V	Drywall / Tape & Bed / CFS / Acoustical Ceilings	\$672,504	\$8,406	\$9.44	\$6.87	
09	V	Carpet/VP/VCT/Ceramic Tile	\$384,960	\$4,812	\$5.41	\$3.93	
09	V	Painting	\$374,970	\$4,687	\$5.27	\$3.83	
10	V	Specialties, Accessories and Shower Doors	\$15,948	\$199	\$0.22	\$0.16	
10	V	Mirrors	w/ 06 Trim & Doors	\$0	\$0.00	\$0.00	
11	V	Residential Appliances - Units	\$189,892	\$2,374	\$2.67	\$1.94	
11	V	Residential Appliances - Laundry	\$80,742	\$1,009	\$1.13	\$0.82	
11	V	Residential Appliances - Common	\$10,116	\$126	\$0.14	\$0.10	Includes Allowance @ Community Rm. Appliances

Lockwood South Budget - Feb. 09, 2022 Update

DIV	Cost Code	DESCRIPTION	BUDGET UPDATE [Accepted PCS Log Items] 02/09/22	Cost / Unit	Cost / NRSF	Cost / GSF	Scope Clarifications / Assumptions
12	✓	Window Treatments	\$33,576	\$420	\$0.47	\$0.34	
12	✓	Cabinets	\$283,180	\$3,540	\$3.98	\$2.89	
12	✓	Tops & Splashes	\$127,584	\$1,595	\$1.79	\$1.30	Granite Tops, Group 1
14	✓	Passenger Elevators	\$185,600	\$2,320	\$2.61	\$1.89	
14	✓	Trash Chutes	\$34,281	\$429	\$0.48	\$0.35	
14	✓	Trash Compactors - Owner / FF&E	\$0	\$0	\$0.00	\$0.00	Owner FF&E
21	✓	Fire Sprinkler Systems + Break Tank & Fire Pump	\$310,760	\$3,885	\$4.36	\$3.17	Includes COH req'd break tank & fire pump
22	✓	Water Service	\$6,000	\$75	\$0.08	\$0.06	
22	✓	Plumbing	\$858,762	\$10,735	\$12.06	\$8.77	
22	✓	Water Submetering	\$10,000	\$125	\$0.14	\$0.10	
23	✓	HVAC	\$664,950	\$8,312	\$9.34	\$6.79	Includes Accepted PCS Log Item # 15
26	✓	Electrical	\$1,381,507	\$17,269	\$19.40	\$14.11	
28	✓	Fire Alarm	\$83,833	\$1,048	\$1.18	\$0.86	
		ALLOWANCES					
26	✓	Site Lighting ALLOWANCE	\$24,150	\$302	\$0.34	\$0.25	Includes Accepted PCS Log Item # 11
26	✓	Light Fixtures ALLOWANCE	\$116,347	\$1,454	\$1.63	\$1.19	Includes Accepted PCS Log Items # 04 & # 10
27	✓	Data / Communications / Access Control / CCTV ALLOWANCE	\$144,501	\$1,806	\$2.03	\$1.48	
03 & 10	✓	Complete Monument ALLOWANCE	\$19,750	\$247	\$0.28	\$0.20	
05	✓	Structural Steel & Railings ALLOWANCE	\$464,948	\$5,812	\$6.53	\$4.75	Includes Accepted PCS Log Item # 14
09	✓	Club ID ALLOWANCE	\$0	\$0	\$0.00	\$0.00	w/ flooring / finishes
31 / 33 / 03 / 07	✓	Detention Vault ALLOWANCE	\$268,500	\$0	\$0.00	\$0.00	Cost Consideration Item based on deleting vault / add storm drainage-spoils per K-H plan dated 11-15-2021
09	✓	Misc. REC Amenities ALLOWANCE	\$50,000	\$625	\$0.70	\$0.51	Playground Equipment
10	✓	Signage ALLOWANCE	\$22,121	\$277	\$0.31	\$0.23	
32	✓	Landscape & Irrigation - ALLOWANCE	\$140,000	\$1,750	\$1.97	\$1.43	Includes Accepted PCS Log Item # 01 (Design Build approach)
06-01	✓	Framing Lumber - ALLOWANCE	\$0	\$0	\$0.00	\$0.00	w/ Framing - turnkey
06-02	✓	Future Cost Escalation	\$200,000	\$0	\$0.00	\$0.00	w/ Framing - turnkey
		CONTINGENCIES					
		Design Contingency	\$0	\$0	\$0.00	\$0.00	removed per Owner direction
		Construction Contingency - 2.00%	\$282,841	\$3,536	\$3.97	\$2.89	
		Escalation	\$0	\$0	\$0.00	\$0.00	By Owner, consider 1% per month
		Subtotal	\$14,624,893				
		GCS / OVERHEAD & FEE					
		General Conditions - 6.00%	\$865,494	\$10,819	\$12.15	\$8.84	
		Permits and Fees	\$0	\$0	\$0.00	\$0.00	By Owner
		Builder Overhead - 2.00%	\$288,498	\$3,606	\$4.05	\$2.95	
		Construction Fee - 6.00%	\$865,494	\$10,819	\$12.15	\$8.84	
		Total	\$16,644,879	\$ 205,554.72	\$ 230.91	\$ 167.90	
		Insurance (SDI & GI)	\$0	\$0	\$0.00	\$0.00	SDI/GI in Builder OH - BR By Owner
			\$ 131,155	\$131,155	\$1,639	\$1.84	
		Total	\$16,775,534	\$ 207,194.36	\$ 232.75	\$ 169.23	

EXHIBIT D
SCOPE OF WORK
[Attached]

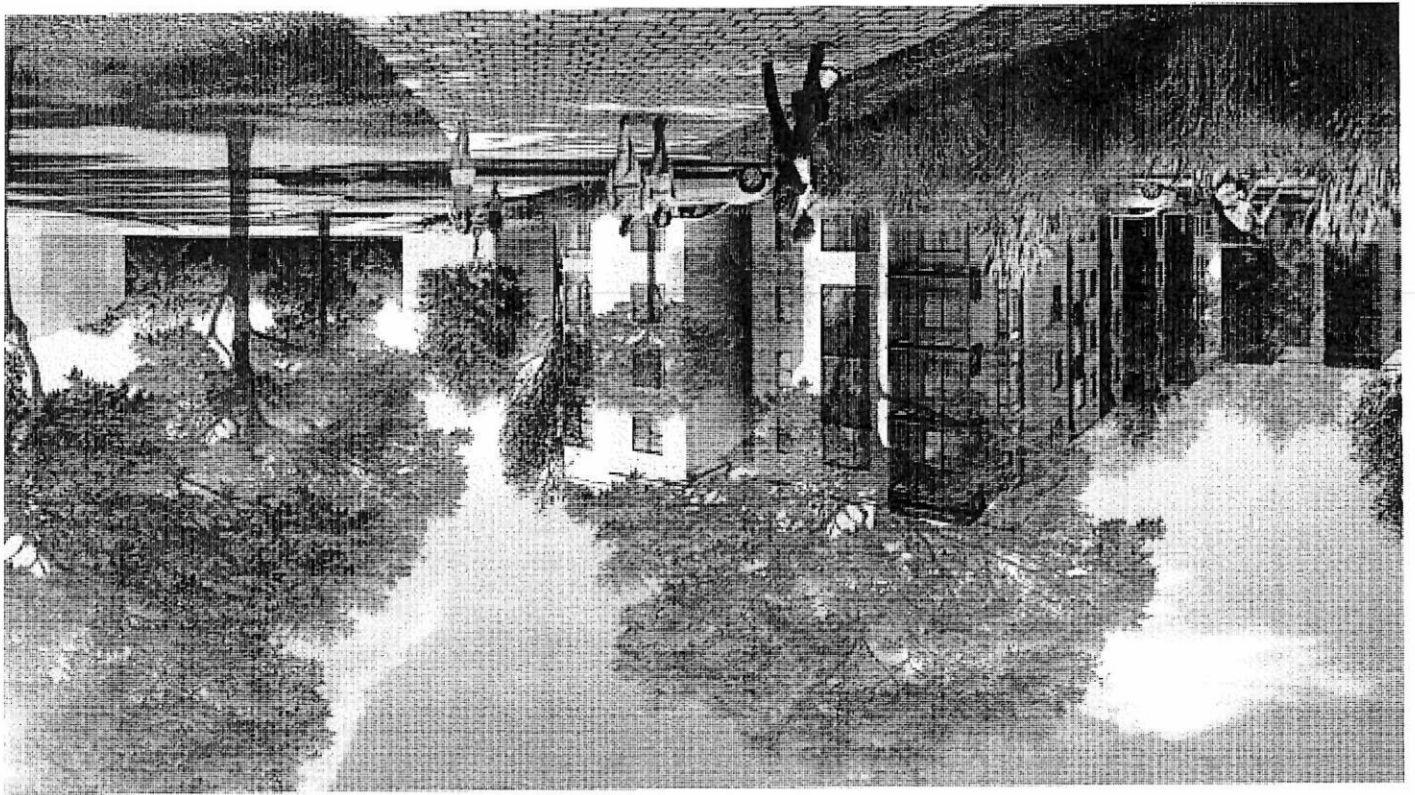
EXHIBIT D

SCOPE OF WORK

Lockwood South Apartments is a new construction development in Houston, Texas within Harris County for the general population. There will be 80 units, 72 of which are reserved for income-qualified residents. There will be a mix of 1, 2 and 3-bedroom units. The development has applied to the City of Houston for CDBG-DR funding which will be structured as a loan to the partnership. The development is part of the 2002 Buffalo Bayou Master Plan and the 2020 Buffalo Bayou East Master Plan.







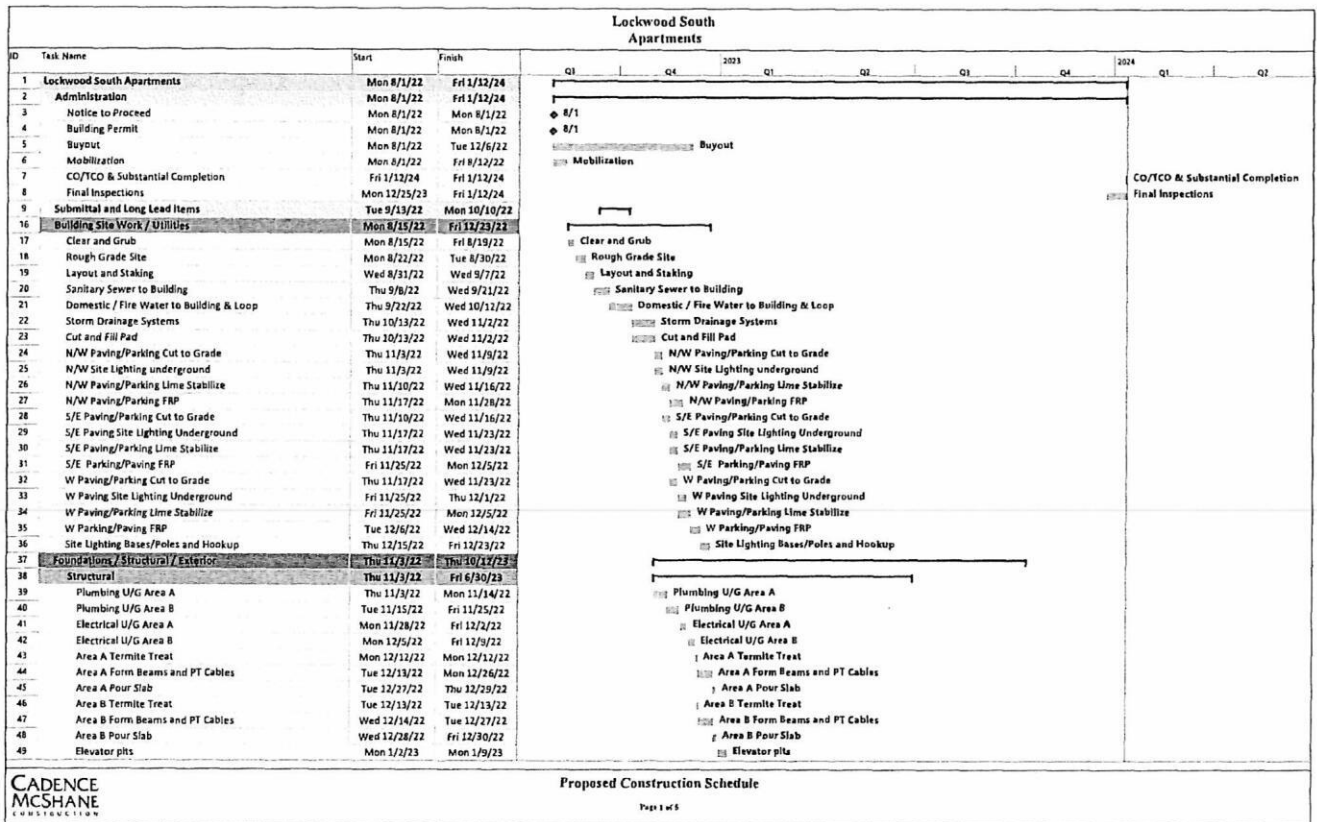


Lockwood South Budget - Feb. 09, 2022 Update

DIV	Cost Code	DESCRIPTION	BUDGET UPDATE (Accepted PCS Log Items) 02/09/22	Cost / Unit	Cost / NRSF	Cost / GSF	Scope Clarifications / Assumptions
		SITE WORK					
31	V	Earthwork	\$354,563	\$4,432	\$4.98	\$3.62	Cost Consideration Item based on haul-off of spoils being placed on the adjacent as indicated storm drainage spoils per E-H plan dated 11-15-2021
33	V	Site Utilities (Wet and Dry)	\$332,731	\$6,159	\$4.67	\$3.40	
31	V	Erosion Control	\$15,800	\$188	\$0.22	\$0.16	
03	V	Site Concrete - Paving, Walks, Site Footings	\$436,928	\$5,462	\$6.14	\$4.46	
32	V	Fences and Gates	N. I. S.	\$0	\$0.00	\$0.00	
32	V	Misc Site + Pavers	\$114,212	\$1,428	\$1.60	\$1.17	Paver Scope Included
		Site Work - Total	\$1,254,234	\$15,677.92	\$17.61	\$12.81	
		BUILDINGS					
32	V	Termite Treatment	\$3,357	\$42	\$0.05	\$0.03	
03	V	Concrete Turn Key (Incls bldg footings, piers, slabs foundations, CIP elevated slabs)	\$286,269	\$3,578	\$4.02	\$2.92	
03	V	Lightweight Concrete / Gypcrete	\$176,504	\$2,206	\$2.48	\$1.80	
04	V	Masonry Turn Key	\$460,700	\$5,759	\$6.47	\$4.70	
05	V	Metal Stairs, Rails and Misc Steel (no fencing)	w/ Metals Allowance	\$0	\$0.00	\$0.00	w/ Steel Allowance
05	V	Steel Carpors	\$0	\$0	\$0.00	\$0.00	
06	V	Framing - turnkey	\$3,382,358	\$42,279	\$47.49	\$34.53	
06	V	Finish Carpentry (Trim, Doors, Hardware, Shelving,)	\$598,185	\$7,477	\$8.40	\$6.11	
07	V	Insulation	\$227,429	\$2,843	\$3.19	\$2.32	
07	V	Damp / Waterproofing	\$27,768	\$347	\$0.39	\$0.28	Includes W.P. Consultant
07	V	Roofing - TPO & SSMR	\$269,394	\$3,367	\$3.78	\$2.75	SSMR not included in Original Budget
07	V	Gutters and Downspouts	\$15,200	\$190	\$0.21	\$0.16	CMC Budget
07	V	Caulking & Sealants	\$54,309	\$679	\$0.76	\$0.55	
08	V	Overhead Doors	\$15,355	\$192	\$0.22	\$0.16	
08	V	Storefront / Glass & Glazing	\$207,593	\$0	\$0.00	\$0.00	Includes Accepted PCS Log Item # 08
08	V	Windows	\$203,915	\$2,549	\$2.84	\$2.08	Includes Accepted PCS Log Item # 02
09	V	Drywall / Tape & Bed / CFS / Acoustical Ceilings	\$672,504	\$8,406	\$9.44	\$6.87	
09	V	Carpel/VIP/VCT/Ceramic Tile	\$384,960	\$4,812	\$5.41	\$3.93	
09	V	Painting	\$374,970	\$4,687	\$5.27	\$3.83	
10	V	Specialties, Accessories and Shower Doors	\$15,948	\$199	\$0.22	\$0.16	
10	V	Mirrors	w/ 06 Trim & Doors	\$0	\$0.00	\$0.00	
11	V	Residential Appliances - Units	\$189,892	\$2,374	\$2.67	\$1.94	
11	V	Residential Appliances - Laundry	\$80,742	\$1,009	\$1.13	\$0.82	
11	V	Residential Appliances - Common	\$10,116	\$128	\$0.14	\$0.10	Includes Allowance @ Community Rm. Appliances

DIV	Cost Code	DESCRIPTION	BUDGET UPDATE				Scope Clarifications / Assumptions
			(Accepted PCS Log Items) 07/09/22	Cost / Unit	Cost / NRSF	Cost / GSF	
12	V	Window Treatments	\$33,576	\$420	\$0.47	\$0.84	
12	V	Cabinets	\$283,180	\$3,540	\$3.98	\$2.89	
12	V	Tops & Splashes	\$127,584	\$1,595	\$1.79	\$1.30	Granite Tops, Group 1
14	V	Passenger Elevators	\$185,600	\$2,370	\$2.61	\$1.89	
14	V	Trash Chutes	\$34,281	\$429	\$0.48	\$0.35	
14	V	Trash Compactors - Owner / FF&E	\$0	\$0	\$0.00	\$0.00	Owner FF&E
21	V	Fire Sprinkler Systems + Break Tank & Fire Pump	\$310,760	\$3,885	\$4.36	\$3.17	Includes CoH req'd break tank & fire pump
22	V	Water Service	\$6,000	\$75	\$0.08	\$0.06	
22	V	Plumbing	\$858,762	\$10,735	\$12.06	\$8.77	
22	V	Water Submetering	\$10,000	\$125	\$0.14	\$0.10	
23	V	HVAC	\$664,950	\$8,312	\$9.34	\$6.79	Includes Accepted PCS Log Item # 15
26	V	Electrical	\$1,381,507	\$17,399	\$19.40	\$14.11	
28	V	Fire Alarm	\$83,833	\$1,048	\$1.18	\$0.86	
		ALLOWANCES					
26	V	Site Lighting ALLOWANCE	\$24,150	\$302	\$0.34	\$0.25	Includes Accepted PCS Log Item # 11
26	V	Light Fixtures ALLOWANCE	\$116,347	\$1,454	\$1.63	\$1.19	Includes Accepted PCS Log Items # 04 & # 10
27	V	Data / Communications / Access Control / CCTV ALLOWANCE	\$144,501	\$1,806	\$2.03	\$1.48	
03 & 10	V	Complete Monument ALLOWANCE	\$19,750	\$247	\$0.28	\$0.20	
05	V	Structural Steel & Railings ALLOWANCE	\$464,948	\$5,812	\$6.53	\$4.75	Includes Accepted PCS Log Item # 14
09	V	Club ID ALLOWANCE	\$0	\$0	\$0.00	\$0.00	w/ flooring / finishes
31 / 33 / 03 / 07	V	Detention Vault ALLOWANCE	\$268,500	\$0	\$0.00	\$0.00	Cost Consideration Item based on deleting vault / add storm drainage spoils per K-H plan dated 11-15-2021
09	V	Misc. REC Amenities ALLOWANCE	\$50,000	\$625	\$0.70	\$0.51	Playground Equipment
10	V	Signage ALLOWANCE	\$22,121	\$277	\$0.31	\$0.23	
32	V	Landscape & Irrigation - ALLOWANCE	\$140,000	\$1,750	\$1.97	\$1.43	Includes Accepted PCS Log Item # 01 (Design Build approach)
06-01	V	Framing Lumber - ALLOWANCE	\$0	\$0	\$0.00	\$0.00	w/ Framing - turnkey
06-02	V	Future Cost Escalation	\$200,000	\$0	\$0.00	\$0.00	w/ Framing - turnkey
		CONTINGENCIES					
		Design Contingency	\$0	\$0	\$0.00	\$0.00	removed per Owner direction
		Construction Contingency - 2.00%	\$282,841	\$3,536	\$3.97	\$2.89	
		Escalation	\$0	\$0	\$0.00	\$0.00	By Owner, consider 1% per month
		Subtotal	\$14,624,893				
		PCS / OVERHEAD & FEE					
		General Conditions - 6.00%	\$865,494	\$10,819	\$12.15	\$8.84	
		Permits and Fees	\$0	\$0	\$0.00	\$0.00	By Owner
		Builder Overhead - 2.00%	\$288,498	\$3,606	\$4.05	\$2.95	
		Construction Fee - 6.00%	\$865,494	\$10,819	\$12.15	\$8.84	
		Total	\$16,644,379	\$205,554.72	\$230.91	\$167.90	
		Insurance (SDI & GI)	\$0	\$0	\$0.00	\$0.00	SDI/GL in Builder OH - BR By Owner
		Total	\$131,155	\$131,155	\$1.89	\$1.84	
		Total	\$16,775,534	\$207,194.16	\$232.75	\$169.23	

EXHIBIT E
CONSTRUCTION SCHEDULE
[Attached]



Lockwood South Apartments				2023								2024	
ID	Task Name	Start	Finish	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
50	Pour Leave out PT Strips	Tue 1/10/23	Mon 1/16/23										
51	CMU / Elev. Shafts / Trash Chutes	Fri 12/30/22	Thu 1/12/23										
52	1st Floor - Area A Framing	Fri 12/30/22	Wed 1/11/23										
53	1st Floor - Area B Framing	Thu 1/12/23	Tue 1/24/23										
54	2nd Floor - Area A Floor Joist and deck	Wed 1/25/23	Thu 2/2/23										
55	2nd Floor - Area B Floor Joist and deck	Fri 2/3/23	Mon 2/13/23										
56	2nd Floor - Area A Framing	Tue 2/14/23	Thu 2/23/23										
57	2nd Floor - Area B Framing	Fri 2/24/23	Tue 3/7/23										
58	2nd Floor - Area A Shear walls and fire stops	Fri 2/24/23	Thu 3/2/23										
59	2nd Floor - Area B Shear walls and fire stops	Wed 3/8/23	Tue 3/14/23										
60	3rd Floor - Area A Floor Joist and deck	Wed 3/8/23	Fri 3/17/23										
61	3rd Floor - Area B Floor Joist and deck	Wed 3/8/23	Fri 3/17/23										
62	3rd Floor - Area A Framing	Mon 3/20/23	Wed 3/29/23										
63	3rd Floor - Area B Framing	Thu 3/30/23	Mon 4/10/23										
64	3rd Floor - Area A Shear walls and fire stops	Thu 3/30/23	Wed 4/5/23										
65	3rd Floor - Area B Shear walls and fire stops	Tue 4/11/23	Mon 4/17/23										
66	4th Floor - Area A Floor Joist and deck	Tue 4/18/23	Thu 4/27/23										
67	4th Floor - Area B Floor Joist and deck	Fri 4/28/23	Tue 5/9/23										
68	4th Floor - Area A Framing	Fri 4/28/23	Tue 5/9/23										
69	4th Floor - Area B Framing	Wed 5/10/23	Fri 5/19/23										
70	4th Floor - Area A Shear walls and fire stops	Wed 5/10/23	Tue 5/16/23										
71	4th Floor - Area B Shear walls and fire stops	Mon 5/22/23	Fri 5/26/23										
72	Roof Trusses and Deck	Mon 5/29/23	Fri 6/16/23										
73	Roofing	Mon 6/19/23	Fri 6/30/23										
74	Exterior	Mon 5/22/23	Thu 10/12/23										
75	North Elevation Scaffold	Mon 5/22/23	Fri 5/26/23										
76	North Elevation Sheathing and waterproofing	Mon 5/29/23	Tue 6/13/23										
77	North Elevation Set Windows and ext. doors	Wed 5/31/23	Tue 6/20/23										
78	North Elevation Roofing soffit and fascia trim	Wed 6/21/23	Tue 7/4/23										
79	North Elevation Masonry	Wed 6/21/23	Tue 7/11/23										
80	North Elevation Hardie	Wed 6/21/23	Tue 7/11/23										
81	North Elevation Paint	Wed 7/12/23	Tue 7/25/23										
82	North Elevation Dismantle scaffold	Wed 7/26/23	Tue 8/1/23										
83	S/E Elevation Scaffold	Wed 8/2/23	Tue 8/8/23										
84	S/E Elevation Sheathing and waterproofing	Wed 8/9/23	Thu 8/14/23										
85	S/E Elevation Set Windows and ext. doors	Fri 8/11/23	Thu 8/31/23										
86	S/E Elevation Roofing soffit and fascia trim	Fri 9/1/23	Thu 9/14/23										
87	S/E Elevation Masonry	Fri 9/1/23	Thu 9/21/23										
88	S/E Elevation Hardie	Fri 9/1/23	Thu 9/21/23										
89	S/E Elevation Paint	Fri 9/22/23	Thu 10/5/23										
90	Balcony Rails	Fri 9/22/23	Thu 10/12/23										
91	Dismantle Scaffold	Fri 10/6/23	Thu 10/12/23										
92	Interior Finishes	Wed 5/24/23	Fri 8/25/23										

Lockwood South Apartments				2023												2024	
ID	Task Name	Start	Finish	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4		
93	MEP / Support Risers / Chutes / Elevator	Mon 7/3/23	Tue 10/9/23														
94	Set Elevator Rails and Door Frames	Mon 7/3/23	Fri 7/14/23														
95	Set Fire Pump and Assoc. Controls	Mon 7/3/23	Tue 7/11/23														
96	Fire Riser 1st to Roof	Wed 7/12/23	Tue 8/1/23														
97	Set MDF and Dist. Panels	Mon 7/3/23	Fri 7/21/23														
98	Refrig and Duct Risers 1st. To roof	Mon 7/3/23	Fri 8/11/23														
99	Trash Chutes Installation to Each Floor	Mon 7/3/23	Fri 7/21/23														
100	Elec. Distribution to Each Floor	Mon 7/24/23	Fri 8/11/23														
101	Set Roof Top Condensers and Energize	Mon 8/14/23	Fri 9/15/23														
102	Power On to Building	Mon 8/14/23	Fri 8/25/23														
103	Elevators Set Cabs and Test	Mon 8/28/23	Fri 9/15/23														
104	Start Up Fire Pump and Test	Fri 9/22/23	Tue 10/3/23														
105	Interlor	Wed 6/14/23	Fri 12/12/23														
106	1st. Floor	Wed 6/14/23	Wed 10/18/23														
107	1st. Flr. Plumbing R.W. and T.O.	Wed 6/14/23	Tue 6/27/23														
108	1st. Flr. Elec. Walls and O.H.	Wed 6/14/23	Tue 6/27/23														
109	1st. Flr. Fire Sprinkler Overhead	Wed 6/14/23	Tue 6/27/23														
110	1st. Flr. Mech. Set Units and Duct Runs	Wed 6/14/23	Tue 6/27/23														
111	1st. Flr. Insulate Walls and Ceiling	Wed 6/14/23	Tue 6/27/23														
112	1st. Flr. Blocking	Wed 6/28/23	Tue 7/4/23														
113	1st. Flr. Drywall Close Walls and Ceilings	Wed 7/5/23	Tue 7/18/23														
114	1st. Flr. TFF Walls and Ceilings	Wed 7/19/23	Tue 8/1/23														
115	1st. Flr. Set Millwork/Trim and Doors	Wed 8/2/23	Fri 8/11/23														
116	1st. Flr. Ceramic	Mon 8/14/23	Fri 8/25/23														
117	1st. Flr. Paint Units	Mon 8/14/23	Fri 8/25/23														
118	1st. Flr. Plumbing Trimout	Mon 8/28/23	Fri 9/8/23														
119	1st. Flr. Mech. Trimout and Startup	Mon 8/28/23	Fri 9/8/23														
120	1st. Flr. Elec. Trimout	Mon 8/28/23	Fri 9/8/23														
121	1st. Flr. Low Voltage Trimout and Test	Mon 9/11/23	Tue 9/19/23														
122	1st. Flr. Flooring	Mon 9/11/23	Fri 9/22/23														
123	1st. Flr. Deliver / Install Appliances	Mon 9/25/23	Fri 9/29/23														
124	Mallroom/Leasing/Gym Setup	Mon 9/25/23	Fri 10/6/23														
125	1st. Flr. Final Clean / Punch	Mon 10/9/23	Wed 10/18/23														
126	2nd. Floor	Wed 6/28/23	Fri 11/24/23														
127	2nd. Flr. Plumbing R.W. and T.O.	Wed 6/28/23	Tue 7/11/23														
128	2nd. Flr. Elec. Walls and O.H.	Wed 6/28/23	Tue 7/11/23														
129	2nd. Flr. Fire Sprinkler Overhead	Wed 6/28/23	Tue 7/11/23														
130	2nd. Flr. Mech. Set Units and Duct Runs	Wed 6/28/23	Tue 7/11/23														
131	2nd. Flr. Insulate Walls and Ceiling	Wed 7/12/23	Tue 7/25/23														
132	2nd. Flr. Blocking	Wed 7/26/23	Tue 8/1/23														
133	2nd. Flr. Drywall Close Walls and Ceilings	Wed 8/2/23	Tue 8/15/23														
134	2nd. Flr. TFF Walls and Ceilings	Fri 8/11/23	Thu 8/24/23														
135	2nd. Flr. Gyp-Crete	Fri 8/25/23	Thu 8/31/23														

Lockwood South Apartments				2023							2024						
ID	Task Name	Start	Finish	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2				
136	2nd. Flr. Set Millwork/Trim and Doors	Fri 9/1/23	Tue 9/12/23														
137	2nd. Flr. Ceramic	Wed 9/13/23	Tue 9/26/23														
138	2nd. Flr. Paint Units	Wed 9/27/23	Tue 10/10/23														
139	2nd. Flr. Plumbing Trimout	Wed 10/11/23	Tue 10/24/23														
140	2nd. Flr. Mech. Trimout and Startup	Wed 10/11/23	Tue 10/24/23														
141	2nd. Flr. Elec. Trimout	Wed 10/11/23	Tue 10/24/23														
142	2nd. Flr. Low Voltage Trimout and Test	Wed 10/25/23	Thu 11/2/23														
143	2nd. Flr. Flooring	Wed 10/25/23	Tue 11/7/23														
144	2nd. Flr. Delivery / Install Appliances	Wed 11/8/23	Tue 11/14/23														
145	2nd. Flr. Final Clean / Punch	Wed 11/15/23	Fri 11/24/23														
146	3rd. Floor	Wed 7/12/23	Fri 12/8/23														
147	3rd. Flr. Plumbing R.W. and T.O.	Wed 7/12/23	Tue 7/25/23														
148	3rd. Flr. Elec. Walls and O.H.	Wed 7/12/23	Tue 7/25/23														
149	3rd. Flr. Fire Sprinkler Overhead	Wed 7/12/23	Tue 7/25/23														
150	3rd. Flr. Mech. Set Units and Duct Runs	Wed 7/12/23	Tue 7/25/23														
151	3rd. Flr. Insulate Walls and Ceiling	Wed 7/26/23	Tue 8/8/23														
152	3rd. Flr. Blocking	Wed 8/9/23	Tue 8/15/23														
153	3rd. Flr. Drywall Close Walls and Ceilings	Wed 8/16/23	Tue 8/29/23														
154	3rd. Flr. TFF Walls and Ceilings	Fri 8/25/23	Thu 9/7/23														
155	3rd. Flr. Gyp-Crete	Fri 9/8/23	Thu 9/14/23														
156	3rd. Flr. Set Millwork/Trim and Doors	Fri 9/25/23	Tue 9/26/23														
157	3rd. Flr. Ceramic	Wed 9/27/23	Tue 10/10/23														
158	3rd. Flr. Paint Units	Wed 10/11/23	Tue 10/24/23														
159	3rd. Flr. Plumbing Trimout	Wed 10/25/23	Tue 11/7/23														
160	3rd. Flr. Mech. Trimout and Startup	Wed 10/25/23	Tue 11/7/23														
161	3rd. Flr. Elec. Trimout	Wed 10/25/23	Tue 11/7/23														
162	3rd. Flr. Low Voltage Trimout and Test	Wed 11/8/23	Thu 11/16/23														
163	3rd. Flr. Flooring	Wed 11/8/23	Tue 11/21/23														
164	3rd. Flr. Deliver / Install appliances	Wed 11/22/23	Tue 11/28/23														
165	3rd. Flr. Final Clean / Punch	Wed 11/29/23	Fri 12/8/23														
166	4th. Floor	Wed 7/26/23	Fri 12/22/23														
167	4th. Flr. Plumbing R.W. and T.O.	Wed 7/26/23	Tue 8/8/23														
168	4th. Flr. Elec. Walls and O.H.	Wed 7/26/23	Tue 8/8/23														
169	4th. Flr. Fire Sprinkler Overhead	Wed 7/26/23	Tue 8/8/23														
170	4th. Flr. Mech Set Units and Duct Runs	Wed 7/26/23	Tue 8/8/23														
171	4th. Flr. Insulate Walls and Ceiling	Wed 8/9/23	Tue 8/22/23														
172	4th. Flr. Blocking	Wed 8/23/23	Tue 8/29/23														
173	4th. Flr. Drywall Close Walls and Ceilings	Wed 8/30/23	Tue 9/12/23														
174	4th. Flr. TFF walls and ceilings	Fri 9/8/23	Thu 9/21/23														
175	4th. Flr. Gyp-Crete	Fri 9/22/23	Thu 9/28/23														
176	4th. Flr. Set Millwork/Trim and Doors	Fri 9/29/23	Tue 10/10/23														
177	4th. Flr. Ceramic	Wed 10/11/23	Tue 10/24/23														
178	4th. Flr. Paint Units	Wed 10/25/23	Tue 11/7/23														

Lockwood South Apartments									
ID	Task Name	Start	Finish	2023				2024	
				Q1	Q2	Q3	Q4	Q1	Q2
179	4th. Flr. Plumbing Trimout	Wed 11/8/23	Tue 11/21/23					4th. Flr. Plumbing Trimout	
180	4th. Flr. Mech. Trimout and Startup	Wed 11/8/23	Tue 11/21/23					4th. Flr. Mech. Trimout and Startup	
181	4th. Flr. Elec. Trimout	Wed 11/8/23	Tue 11/21/23					4th. Flr. Elec. Trimout	
182	4th. Flr. Low Voltage Trimout and Test	Wed 11/22/23	Thu 11/30/23					4th. Flr. Low Voltage Trimout and Test	
183	4th. Flr. Flooring	Wed 11/22/23	Tue 12/5/23					4th. Flr. Flooring	
184	4th. Flr. Deliver / Install Appliances	Wed 12/6/23	Tue 12/12/23					4th. Flr. Deliver / Install Appliances	
185	4th. Flr. Final Clean / Punch	Wed 12/13/23	Fri 12/22/23					4th. Flr. Final Clean / Punch	

4600017087

Owner Loan Agreement

(The Buffalo Bayou Partnership/Lockwood South Apts, LP)

21st This Owner Loan Agreement ("**Owner Loan Agreement**") is made and entered into the December day of December, 2022 by and between The Buffalo Bayou Partnership, a Texas non-profit corporation ("**Lender**"), and Lockwood South Apts, LP, a Texas limited partnership ("**Borrower**"), for the purposes and consideration hereinafter set forth.

WHEREAS, Lender has agreed to make a loan ("**Borrower Loan**") to Borrower in the original principal sum of \$9,950,000.00 as evidenced by a note ("**Borrower Note**") of even date herewith and secured by a Leasehold Deed of Trust against the property described therein ("**Property**") and located on the Land, more particularly described in Exhibit A attached hereto;

WHEREAS, Borrower and Lender desire to enter into this Owner Loan Agreement to set forth certain terms and conditions of the Borrower Loan to supplement the provisions of the other documents executed in connection with, and evidencing or securing, the Borrower Loan ("**Loan Documents**").

NOW THEREFORE, for and in consideration of the Borrower Loan and the mutual covenants contained herein, the parties agree as follows:

1. Terms of Borrower Loan. The terms of the Borrower Loan are as follows:
 - (a) Borrower Note. Borrower's obligation to repay Lender is evidenced by a promissory note of even date herewith, payable to Lender in the original principal amount of \$9,950,000.00.
 - (b) Purpose. The purpose of the loan is to finance the acquisition and construction of a multifamily affordable housing development.
 - (c) Term. The term of the Borrower Loan shall commence on the date of Closing (as defined in the Loan Agreement by and between the City of Houston ("**City**"), Lender, and Borrower (the "**Agreement**")), and shall mature on the Maturity Date (as defined in the Borrower Note).
 - (d) Interest. The Loan shall bear interest in accordance with the terms of the Borrower Note and shall be payable as set out in the Borrower Note and the Agreement.
2. City Loan and Agreement. The Borrower, Lender and the City of Houston have entered into the Agreement with respect to a \$9,950,000.00 loan ("**City Loan**") from the City to Lender, the proceeds of which are funding the Borrower Loan. This Owner Loan Agreement, the Borrower Note and all of the other Loan Documents executed in connection with and securing, evidencing, or governing the Borrower Loan (including, without limitation, the Leasehold Deed of Trust securing the Borrower Loan) have been collaterally assigned to the City to secure the City Loan pursuant to that Collateral Assignment of Note and Liens dated of even date herewith, executed by Lender (the "**Collateral Assignment**"). The covenants, obligations, requirements, representations and warranties of Borrower under the Agreement, to the extent applicable to Borrower or the Property, or to the ability of the Parties to perform their obligations related to the Property and the Agreement, are incorporated into and made a part of this Owner Loan Agreement and shall additionally constitute covenants, obligations, requirements, representations and warranties of Borrower to Lender and the City, as a third party beneficiary of this Owner Loan Agreement and as a collateral assignee of the Loan Documents. Borrower, the Borrower Loan and the Property shall be subject to all terms and conditions of the Agreement. Borrower specifically assumes and agrees to perform all of the covenants, obligations, and requirements to be performed by Borrower as "Owner" set forth in the Agreement for the benefit of the City and confirms the representations and warranties of Borrower as "Owner" thereunder for the benefit of the City and as a condition of the Agreement and this Owner Loan Agreement. In the event of a conflict between the terms

and conditions of this Owner Loan Agreement and the Agreement, the terms and conditions of the Agreement shall control. All capitalized terms not defined herein shall have the definition provided to them in the Agreement.

3. Funding.

(a) No Liability for Interruption of Funding. In the event that the City ceases funding the City Loan to Lender in accordance with the Agreement, Lender may cease funding the Borrower Loan to the Borrower without obligation to the Borrower and without being liable to the Borrower for any damages Borrower may incur as a result of such cessation in funding; provided, however, Lender agrees to deliver to Borrower reasonably satisfactory documentation evidencing City's decision to cease funding, and Lender agrees to use reasonable efforts to resolve any City concerns.

(b) Deemed Funding under City Loan. Disbursements under the City Loan will be by check or wire by the City made payable to Lender, Borrower or the entity which has provided the services entitled to be funded under the Agreement and this Owner Loan Agreement. The entire amount of any funding provided by the City to Lender under the City Loan shall be used by Lender to immediately fund the Borrower Loan and shall be deemed to be funding of the Borrower Loan.

4. Borrower's Representations and Warranties.

Borrower hereby each represents, warrants and agrees for the benefit of the City and the Lender that as of the date hereof and continuing during the entire term of this Owner Loan Agreement, and for so long as the City shall have any commitment or obligation to make any disbursements of the City Loan, and during the Affordability Period as follows:

(a) Ownership of Property. Upon the Closing Date of the City Loan, Borrower will thereafter hold a leasehold interest in and to the Property and shall provide the Director of the City's Housing and Community Development Department ("**Director**") with a copy of the Ground Lease. Borrower has disclosed to the Director's satisfaction and Director hereby acknowledges and approves that Borrower acquired the leasehold interest in the Property from Lender; or a director, officer, employee, partner, company, entity, or individual of, related to or affiliated with Lender.

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

(c) Taxes and Assessments. There are no delinquent taxes, assessments, or other impositions on the Property, or if there are any delinquent taxes, assessments, or other impositions on the Property, same will be paid prior to or simultaneously with Closing of the City Loan. The Property has not been subject to any special (reduced) real estate appraisal, or abatement, exemption or deferral of ad valorem taxes (other than statutorily permitted challenges as to the amount) in the five (5) years preceding the date of Borrower's acquisition of the leasehold interest under the Ground Lease, unless Borrower has an effective agreement providing that another party is liable for all liability, accruing prior to Borrower's acquisition of the Property 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.

(d) Financial Capacity. The financial representations made by Lender to the City and by Borrower to Lender or the City concerning Lender's and Borrower's financial condition are true and correct in all material respects and, upon the Closing of the City Loan and the Borrower Loan, Lender and Borrower have the financial capacity to carry out their respective obligations under this Owner Loan Agreement, the Loan Documents, the Agreement and related documentation. If any material negative change in either Lender's or Borrower's financial condition occurs, Lender and Borrower shall report such change to the City within five (5) business days.

(e) Authorization. All action on the part of Borrower necessary to authorize the transactions contemplated by this Owner Loan Agreement and the Agreement has been taken, and upon execution of this Owner Loan Agreement and the Agreement, this Owner Loan Agreement shall constitute the binding and enforceable obligation of Borrower which shall be enforceable by the Lender and City in accordance with their terms. In addition, all of the covenants, obligations, and requirements set forth herein to be assumed by Borrower and the representations and warranties made hereunder by Borrower shall constitute the binding and enforceable covenants, obligations and requirements and representations and warranties of Borrower which shall be enforceable by the Lender and City in accordance with their terms.

(f) Mechanics' and Materialmen's Liens. As of the Closing Date, there are no existing or threatened mechanics' and materialmen's liens against the Property, and the Borrower does not know of any reason such liens may be filed or threatened against the Project. As of the date of disbursement of City Loan funds, no work will have been performed on or materials incorporated into the Project by Borrower, Lender or Borrower's or Lender's contractors or subcontractors that could result in the imposition of a lien against the Project. No work shall commence on the Project prior to the disbursement of City Loan funds.

(g) Approved Final Construction Budget Contents. The Approved Final Construction Budget specifies (a) a listing of all costs necessary to (i) complete the Work on the Project and (ii) reach a 90% occupancy level, and (b) the sources of funding which will be used to complete the Work and reach 90% occupancy.

(h) Expertise. Borrower has engaged competent persons and firms for the purpose of constructing, leasing and managing the Project.

(i) Legal Existence. Borrower is a limited partnership duly created, validly existing and in good standing under the laws of the State of Texas.

(j) Access. Access by vehicles to the Project for the full utilization of the Project for its intended purposes either (a) exists over paved roadways dedicated to the public 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/or such governmental authority to assure the construction and installation of such roadways.

(k) Use of Project. During the Affordability Period, that portion of the Project specified in Section 6.8 of the Agreement shall be used solely for the purpose of housing LMI Persons in accordance with Section 6.8 thereof, and for no other purpose.

(l) No Religious Affiliation. Borrower is not a religious organization and no portion of the proceeds of the City Loan will be used to construct or acquire housing to be owned, operated or used by a religious organization.

(m) Compliance with Federal, State, and Local Laws and Regulations. Borrower shall construct, lease and operate the Project in accordance with all applicable law including, without limitation, the Model Energy Code, the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968.

5. Default under this Agreement. The Lender may declare a default ("Default") under this Owner Loan Agreement or any one or more of the Loan Documents upon the occurrence and during the continuation beyond the expiration of all applicable notice, grace, and cure periods of any one or more of the following circumstances:

(a) Monetary Default. If Borrower fails to pay when due any portion of the sums owing under the Borrower Note, this Owner Loan Agreement and/or any of the Loan Documents and such failure continues for ten (10) business days after written notice thereof from the Lender or any holder of the Borrower Loan;

(b) Non-Monetary Default. If Borrower fails, refuses or neglects to perform fully and timely any obligation or breaches any covenant, condition, representation or warranty under this Owner Loan Agreement or any other Borrower Loan Document and such failure continues for thirty (30) days following written notice from Lender 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 any such cure periods would cause a material violation to occur under applicable law or cause a recapture of any tax credits the notice and cure period shall be reduced to a length of time that would not cause a material violation of applicable law or cause such a recapture;

(c) Default under Agreement by Borrower. Notwithstanding the foregoing, a "Default" under the Agreement by Borrower shall immediately constitute a Default by Borrower under this Owner Loan Agreement. Notwithstanding the provisions of Subparagraphs 5(a) and 5(b) above, in the event of a conflict between the available notice and cure periods under the Agreement and this Owner Loan Agreement, the Agreement shall control, and upon the occurrence of a Default under the Agreement, no further notice and/or cure periods shall be available under this Owner Loan Agreement for such event and such event shall immediately be deemed a Default by Borrower under this Owner Loan Agreement.

(d) Standstill Restrictions. Notwithstanding anything contained herein to the contrary, for a period of seventeen (17) years from the date hereof, Lender shall not (i) commence foreclosure proceedings with respect to the mortgaged property under this Owner Loan Agreement or Leasehold Deed of Trust or exercise any other rights or remedies it may have under the this Owner Loan Agreement, including, but not limited to, accelerating sums due under this Owner Loan Agreement, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies hereunder and (ii) join with any other creditor in commencing any bankruptcy reorganization arrangement, insolvency or liquidation proceedings with respect to the Borrower.

6. Notice and Cure Rights. Notwithstanding anything to the contrary contained in the Loan Documents, Lender hereby agrees that any cure of any default or Default made or tendered by a Tax Credit Investor shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower or any other party under the terms of the Loan Documents shall also be sent to:

USA Institutional Lockwood South LLC
777 West Putnam Avenue
Greenwich, CT 06830
Attention: Joanne D. Flanagan, Esq.

7. Lender's Remedies. If a Default exists under this Owner Loan Agreement, Lender shall be entitled to exercise all rights and remedies available under the Loan Documents, without further notice or opportunity to cure by Borrower except as may be required by applicable law or the other Loan Documents. Notwithstanding the foregoing, or anything else to the contrary set forth in the Loan Documents, during such time as the Collateral Assignment remains in effect, if a Default exists hereunder or under any of the other Loan Documents, Lender agrees that it will not accelerate the Borrower Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

8. Amendments and Waivers. Borrower and Lender acknowledge and agree that the terms and provisions of this Owner Loan Agreement and the Loan Documents may not be amended and no waivers of any provisions of this Owner Loan Agreement or any Loan Document shall be effective without the prior written consent of the City as the collateral assignee of Lender. In

addition, any prepayment of the Borrower Note shall require the prior written consent of the City as the collateral assignee of the Lender.

9. Limit to Indemnification. Notwithstanding anything to the contrary set forth in any of the Loan Documents, no indemnity obligation set forth in any Loan Document shall extend to or be enforceable against any limited partner of Borrower including any Tax Credit Investor in its capacity as a limited partner of Borrower (but not otherwise).

10. Amendments to Organizational Documents. Except as otherwise provided in the Agreement, Borrower shall not have the right to amend its organizational documents without Lender's and the City's prior written approval.

11. Removal of Borrower's General Partner (if any). Notwithstanding anything to the contrary contained in the Loan Documents but subject to the requirements of the Agreement, if Borrower is a limited partnership, the removal and/or replacement of Borrower's general partner for cause in accordance with the terms of Borrower's partnership agreement shall not require Lender's consent, constitute a default under the Loan Documents or accelerate the maturity of the Loan, but shall be subject to the terms and conditions of the Agreement.

12. Transfer of Borrower's Partnership Interest. Subject to the terms of the Agreement, but notwithstanding anything to the contrary contained in this Owner Loan Agreement and/or in any of the other Loan Documents, if Borrower is a limited partnership, Lender's consent shall not be required (and it shall be expressly permitted and not be deemed a Default under any of the Loan Documents), in connection with:

(a) The transfers and/or assignments permitted by Section 10.1.16 of the Agreement, including without limitation, the transfer and/or the assignment by the Tax Credit Investor (if any) of its interest in Borrower to an entity controlled or managed by an entity that is related to or under common control with the Tax Credit Investor;

(b) The transfer and/or assignment by any Tax Credit Investor of its interest in Borrower to Lender, a separate legal entity controlled by Lender or an affiliate in which Lender holds a controlling interest at the end of the Tax Credit Compliance Period applicable to Borrower, provided that as a condition of and prior to such transfer, the entity acquiring such interest execute any documentation required by the City; (ii) assumes in writing all obligations and covenants of the Tax Credit Investor in connection with Borrower; and (iii) the City's collateral position remains unimpaired as determined in the reasonable discretion of the City attorney;

(c) A change in the beneficial ownership of any Tax Credit Investor so long as such entity remains controlled by an affiliate thereof;

(d) The pledge and encumbrance of the interests of any Tax Credit Investor to or for the benefit of any financial institution that enables such Tax Credit Investor to make its capital contributions to Borrower;

(e) The initial issuance of partnership interests in Borrower equal to 99.99% of the profits, losses, credits, distributions and other interests in Borrower to the limited partners of Borrower; and/or

(f) The exercise by Lender or an affiliate of Lender in which Lender owns a controlling interest of a right of first refusal to acquire the Limited Partners' interest in Borrower.

13. Insurance. Borrower shall, prior to or concurrently with the closing of the Borrower's Loan, deliver to Lender and City insurance policies evidencing the insurance coverages and requirements set forth in Section 6.25 and Appendix 2 of the Agreement and which policies shall name Lender and the City as additional insureds thereunder. In the event of a conflict between the insurance requirements of the Deed of Trust and the Agreement, the Agreement will control.

14. Miscellaneous.

(a) This Owner Loan Agreement as supplemented by the Loan Documents contains the entire agreement between the parties hereto relating to the Loan and shall be amended only by an instrument in writing executed by the parties hereto.

(b) This Owner Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, as the case may require.

(c) This Owner Loan Agreement shall be governed by the law of the State of Texas. Any dispute arising out of or in connection with this Owner Loan Agreement shall be resolved in the state courts located in Harris County, Texas.

(d) This Owner Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original.

(e) This Owner Loan Agreement may be signed and delivered electronically or by electronic signature and that electronic signature will be as good, binding, and effective as an original or manual signature

(f) Notices under the Loan Documents 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) actual 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.

15. Non-Recourse. The Borrower Loan is non-recourse to Borrower.

[Executed on the following page]

Signature Page for Borrower/Owner Loan Agreement

Executed effective as of the date set forth above.

BORROWER:

LOCKWOOD SOUTH APTS, LP,
a Texas limited partnership

By: Lockwood South GP, LLC,
a Texas limited liability company,
its general partner

By: Lockwood South MM, LLC,
a Texas limited liability company,
its managing member

By: Brinshore Development, L.L.C.,
an Illinois limited liability company,
its managing member

By: RJS Real Estate Services, Inc.,
an Illinois corporation,
its member

By: 
Richard Sciortino, President

LENDER:

The Buffalo Bayou Partnership,
a Texas nonprofit corporation

By: _____
Anne Olson, President

Signature Page for Borrower/Owner Loan Agreement

Executed effective as of the date set forth above.

BORROWER:

LOCKWOOD SOUTH APTS, LP,
a Texas limited partnership

By: Lockwood South GP, LLC,
a Texas limited liability company,
its general partner

By: Lockwood South MM, LLC,
a Texas limited liability company,
its managing member

By: Brinshore Development, L.L.C.,
an Illinois limited liability company,
its managing member

By: RJS Real Estate Services, Inc.,
an Illinois corporation,
its member

By: _____
Richard Sciortino, President

LENDER:

The Buffalo Bayou Partnership,
a Texas nonprofit corporation

By:  _____
Anne Olson, President

**EXHIBIT A
LEGAL DESCRIPTION OF LAND:**

TRACT 1:

Being a tract or parcel containing 3.0345 acres (132,182 square feet) of land, more or less, situated in the S.M. Williams Survey, Abstract Number 87, Harris County, Texas; being out of and a portion of the 11.396 acre remainder of that certain called 13.3774 acre tract conveyed to GC 233, Inc. by deed recorded under Harris County Clerk's File (H.C.C.F.) Number S265443, Harris County, Texas; and being all of Unrestricted Reserve "A" (30345 Acres), Lockwood South Sec 1, a plat of subdivision recorded at Film Code Number 696679 of the Harris County Map Record; said 3.0345 acre tract being more particularly described as follows (Bearings described herein are referenced to the Texas Coordinate System, South Central Zone No. 4204 NAD83)):

COMMENCING at a point for the northeasterly corner of Lot 6, Block 1, Navigation Addition, a plat of subdivision recorded in Volume 1163, Page 99 of the Harris County Deed Records (H.C.D.R.) and being the southeasterly corner of said called 13.3774 acre tract, from which a 1/2-inch iron rod with "Precision" cap bears North 43°54'40" East, 2.84 feet as called under H.C.C.F. Number 20070433434;

THENCE, North 72°28'07" West, along the northerly line of said Block 1 and along the southerly line of said called 13.3774 acre tract, a distance of 301.83 feet to a 5/8-inch iron rod found marking the common northerly corner of Lot 2 and Lot 3 of said Block 1;

THENCE, South 17°31'53" West, along the common line of said Lot 2 and Lot 3, and along the southerly line of said called 13.3774 acre tract, a distance of 71.41 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the northerly right-of-way (R.O.W.) line of Ira Street (60-foot wide) as delineated on said Navigation Addition;

THENCE, North 72°28'07" West, along said northerly R.O.W. line of Ira Street and along the southerly line of said called 13.3774 acre tract, a distance of 188.44 feet to a 5/8-inch iron rod found marking the southwesterly corner of Lot 1, Block 1, Navigation Addition;

THENCE, North 32°04'31" East, along the westerly line of said Lot 1, Block 1 and along the southerly line of said called 13.3774 acre tract, at a distance of 73.75 feet passing the northwesterly corner of said Lot 1, Block 1, continuing, in all, a distance of 78.43 feet to a point for corner in the curved southerly line of a 50-foot wide San Antonio-Aransas Pass Railway as recorded in Volume 825, Page 642 H.C.D.R., from which a 1/2-inch iron rod with "Pinnell" cap bears South 23°01'17" East, 0.44 feet;

THENCE, Westerly, along the southerly line of said 50-foot wide Railway and along the southerly line of said called 13.3774 acre tract, a distance of 116.36 feet along the arc of a curve to the left, having a radius of 611.62 feet, a central angle of 10°54'02", and a chord which bears South 85°51'54" West, 116.19 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE, South 82°24'53" West, along the southerly line of said 50-foot wide Railway and along the southerly line of said called 13.3774 acre tract, a distance of 84.36 feet to a 5/8-inch iron rod with "Prejean" cap found marking the beginning of a curve to the right;

THENCE, Westerly, along the southerly line of said 50-foot wide Railway and along the southerly line of said called 13.3774 acre tract, a distance of 92.32 feet along the arc of a curve to the right, having a radius of 741.20 feet, a central angle of 07°08'11", and a chord which bears South 85°58'59" West, 92.26 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of the remainder of that certain called 0.552 acre tract a 50-foot wide San

Antonio-Aransas Pass Railway as recorded in Volume 864, Page 531 and Volume 868, Page 61 H.C.D.R.;

THENCE, North 33°08'58" East, along the southerly line of said called 13.3774 acre tract, a distance of 58.57 feet (called 58.22) to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point;

THENCE, North 57°22'15" West, along the southerly line of said called 13.3774 acre tract and along the northerly line of that certain called 1.7152 acre tract as recorded under H.C.C.F. Number 20090043611, a distance of 212.44 feet to a 5/8-inch iron rod with "Prejean" cap found marking an angle point in the north line of said called 1.7152 acre tract and marking the southwesterly corner of said called 13.3774 acre tract;

THENCE, North 32°04'33" East, along the westerly line of said called 13.3774 acre tract and along the northerly line of that certain called 1.7152 acre tract, at a distance of 22.97 feet passing the southeast corner of Drennan Street (58-foot wide R.O.W.) as recorded under H.C.C.F. Number M747114, from which a 1-inch iron rod bears North 19°47'39" East, 2.35 feet, at a distance of 82.90 feet passing a 5/8-inch iron rod with "Bowes" cap found marking the northeast corner of said Drennan Street and marking the most southerly southeast corner of that certain called 13.600 acre tract as recorded under H.C.C.F. Number RP-2017-39680, continuing along the easterly line of said called 13.600 acre tract and along the westerly line of said called 13.3774 acre tract, in all, a distance of 138.34 feet to a 5/8 inch iron rod with capp stamped "Terra Surveying" set marking the southwesterly corner and POINT OF BEGINNING of the herein described tract;

THENCE, North 32°04'33" East, continuing along the easterly line of said called 13.600 acre tract and along the westerly line of said called 13.3774 acre tract, a distance of 73.63 feet to a 5/8-inch iron rod with cap (unreadable) found marking an angle point in the common line of said called 13.600 acre tract and said called 13.3774 acre tract and marking the most westerly northwest corner of the herein described tract, from which a found 5/8-inch iron bears South 71°59'25" East, 0.21 feet and from which another found 5/8-inch iron bears South 73°55'46" East, 0.61 feet;

THENCE, South 59°29'39" East, along the westerly line of said called 13.3774 acre tract and along the easterly line of said called 13.600 acre tract, a distance of 242.20 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an interior corner of the herein described tract;

THENCE, North 33°45'53" East, along the westerly line of said called 13.3774 acre tract and along the easterly line of said called 13.600 acre tract, a distance of 358.98 feet to a 5/8 inch iron rod with cap stamped "Terra Surveying" set marking the most northerly northwest corner of the herein described tract, from which the southwesterly corner of that certain called 1.955 acre tract as recorded under H.C.C.F. Numbers 20080453471 and 20090298316 bears North 33°45'53" East, 262.29 feet, where a 5/8-inch iron rod bears North 33°45'53" East, 0.44 feet;

THENCE, South 48°46'16" East, crossing into said called 13.3774 acre tract, a distance of 234.32 feet to a 5/8 inch iron rod with cap stamped "Terra Surveying" set marking an angle point;

THENCE, South 51°30'19" East, a distance of 32.82 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point;

THENCE, South 56°36'01" East, a distance of 26.31 feet to to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the northeasterly corner of the herein described tract;

THENCE, South 31°26'26" West, a distance of 314.87 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeasterly corner of the herein described tract;

THENCE, Westerly, a distance of 164.22 feet along the arc of a curve to the left, having a radius of 671.62 feet, a central angle of 14°00'34", and a chord which bears North 82°20'07" West, 163.81 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE, North 60°05'06" West, a distance of 397.55 feet to the POINT OF BEGINNING and containing 3.0345 acres (132,182 square feet) of land, more or less.

TRACT 2: Easement

Non-exclusive easement rights in and to an Access Easement Tract as created, described and depicted by Ingress and Egress Easement Agreement dated September 10, 2021, executed by and between CG 233, Inc., a Texas corporation, and Lockwood South Apts, LP, a Texas limited partnership, recorded under County Clerk's File No. RP-2021-519123 of the Official Public Records of Harris County, Texas; said easement containing 0.1118 acre (4,872 square feet) of land situated in the S. M. Williams Survey, Abstract No. 87, Harris County, Texas, and being out of and a portion of the 11.396 acre remainder of that certain called 13.3774 acre tract conveyed to GC 233, Inc. by deed recorded under County Clerk's File No. S265443 of the Official Public Records of Harris County, Texas.