

# HARRIS COUNTY HOUSING AUTHORITY

8933 Interchange  
Houston, Texas 77054

713-578-2100  
[www.hchatexas.org](http://www.hchatexas.org)

## REQUEST FOR PROPOSALS for Financial Services – Mortgage Refinancing RFP NO. 17-10R

The Harris County Housing Authority (HCHA) on behalf of HCHA Cypresswood Estates, LLC (“CE”) hereby solicits proposals from qualified financial institutions to refinance the existing mortgage for Cypresswood Estates. CE is seeking competitive refinancing terms to refinance the existing indebtedness of \$3,300,000.00 and to provide cash out funds. The HCHA is seeking the additional cash for potential capital improvements, for owners reserves and to further the HCHAs Affordable Housing Program. The targeted loan amount is \$4,700,000.00 to \$5,000,000.00 as specified in this Request for Proposal (RFP).

This RFP contains submission requirements, scope of service, period of services, terms and conditions and other pertinent information for submitting a proper and responsive submittal. RFP #17-10R will be posted on and can be downloaded from HCHA’s website [www.hchatexas.org](http://www.hchatexas.org).

Prospective **Offerors** desiring any explanation or interpretation of this solicitation must make the request in writing no later than November 7, 2017. The request must be emailed to Paul Curry at [paul.curry@hchatexas.org](mailto:paul.curry@hchatexas.org). Any information given to a prospective **Offeror** about this solicitation will be furnished to all other prospective **Offerors** as a written amendment to the solicitation. All amendment(s) to this solicitation, if issued, will be posted on HCHA’s website [www.hchatexas.org](http://www.hchatexas.org). All **Offerors** are encouraged to check the HCHA website for amendment(s) issuance.

The proposal(s) must be enclosed in a sealed envelope and labeled as follows: **Financial Services – Mortgage Refinancing. RFP #17-10R, Due Date and Time: November 17, 2017, 3:00 P.M. (CST), Name of Offeror**

\_\_\_\_\_.

The RFP submission must be addressed to **Paul Curry, Finance Director, Harris County Housing Authority, 8933 Interchange Drive, Houston, Texas 77054**. RFP submissions may also be emailed as a PDF attachment to [paul.curry@hchatexas.org](mailto:paul.curry@hchatexas.org).

Submittals must reach HCHA no later than **3:00 P.M. (CST) on November 17, 2017**. Late submissions will be handled in accordance with the provisions in Form HUD-5369-B title “Late Submissions, Modifications, and Withdrawal of Offers.” Submittals will be held in confidence and will not be released in any manner until after the contract award.

Submittals will be evaluated on the criteria stated in the **RFP**. Negotiations may be conducted with **Offerors** who have a reasonable chance of being selected. After evaluation of the proposals, if any, the contract will be awarded to the responsible **Offeror(s)** whose qualifications, price and other factors considered are the most advantageous to HCHA.

HCHA reserves the right to reject any and all submittals.

*Horace Allison, AHA*

Horace Allison, CEO  
Harris County Housing Authority

**TABLE OF CONTENTS**  
**RFP NO. 17-04 (Re-issued)**

1.	Profile of Harris County Housing Authority	5
2.	Introduction	5
3.	Procurement Schedule	5
4.	Deliverables	6
5.	Prices and Terms	6
6.	General Requirements	7
7.	Correspondence	7
8.	Document Requirements	8
9.	Evaluation Criteria	9
10.	Availability of Records	10
11.	Assignment or Transfer	10
12.	Contract Award	10
13.	Standards of Conduct	10
14.	Conflict of Interest	11
15.	Statement of Ownership	11
16.	M/WBE Participation	11
17.	Pertinent Federal Regulations with Regard to Non-discrimination and Equal Opportunity	11

## **ATTACHMENTS**

<b>Attachment A:</b>	General Scope of Services
<b>Attachment B:</b>	Conflict of Interest Questionnaire (CIQ)
<b>Attachment C:</b>	Form of Non-Collusive Affidavit Form
<b>Attachment D:</b>	M/WBE Participation Form
<b>Attachment E:</b>	Instructions to Offerors for Non-Construction (Form HUD-5369-B)
<b>Attachment F:</b>	Certifications and Representations of Offerors for Non-Construction Contracts (Form HUD 5369-C)
<b>Attachment G:</b>	General Conditions for Non-Construction Contracts (Form HUD 5370-C)
<b>Attachment H:</b>	Certification of Payments to Influence Federal Transactions
<b>Attachment I:</b>	Site Plan, Unit Plans and Photographs
<b>Attachment J:</b>	Promissory Note and Neighborhood Stabilization Program (NSP) Funds Second Amendment
<b>Attachment K:</b>	Multi-family Leasehold Deed of Trust and Letter Loan Agreement
<b>Attachment L:</b>	Financial Statements for Fiscal Years 2014, 2015 and 2016 and Year to Date Financial Statement 2017
<b>Attachment M:</b>	Rent Roll
<b>Attachment N:</b>	Original Loan Closing-Sources and Uses
<b>Attachment O:</b>	Operation Statements-Cypresswood Estates March 2017-July 2017



## 1. PROFILE OF THE HARRIS COUNTY HOUSING AUTHORITY

Harris County Housing Authority (“**HCHA**” or the “**Authority**”) is governed by the Texas Housing Authorities Law, codified in the Texas Local Government Code. The Authority is a unit of government and its functions are essential governmental functions. It operates and manages its affordable housing developments to provide decent, safe, sanitary and affordable housing to low income families, veterans, the elderly, and the disabled, and implements various programs designed and funded by the U.S. Department of Housing and Urban Development (“**HUD**”). The Authority is a Public Housing Agency (“**PHA**”) that administers HUD’s Section 8 Housing Choice Voucher (“**HCV**”) and Veterans Affairs Supportive Housing (“**VASH**”) Programs. **HCHA**’s revenue is derived from federal funds, administrative fees, development grants, and rental income.

**HCHA** enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers.

The property of **HCHA** is used for essential public and governmental purposes. The Authority and its property are exempt from all taxes, including sales tax on all its purchases of supplies and services.

**HCHA** Cypresswood Estates, LLC (**CE**) is an affiliate of the **HCHA** and its Board is comprised of members to the **HCHA** Board of Commissioners. **CE** is the borrower on the current loan.

## 2. INTRODUCTION

**HCHA**, as part of its mission to provide safe, decent and sanitary affordable housing for low-income persons, hereby seeks proposals from qualified financial institutions (**Offerors**) to refinance the existing mortgage for Cypresswood Estates. The current mortgage balance is approximately \$3,300,000.00. This **RFP** will consider qualifications, rates and loan terms/conditions in the selection process. The financial services to be performed is generally listed in “**Attachment A**,” but may not be all inclusive of the services needed. Consequently, evaluation by the successful **Offeror** may lead to alterations in the scope.

**HCHA/CE** will consider most favorably **Offerors** who clearly demonstrate a knowledge of the Federal, State or local laws applicable to the financing of affordable housing. The **Offeror** must have demonstrated experience in the interaction of housing authorities with **HUD**, **HUD** regulations and requirements related to the financing of affordable housing. All submittals must conform to requirements outlined herein.

If a contract is awarded, it will be awarded to the responsible **Offeror** whose qualifications, rates, loan terms/conditions and other factors are deemed most advantageous to the **Authority**. Additional requirements or restrictions imposed by **HUD** and other governmental entities will also be considered in rendering a decision.

## 3. PROCUREMENT SCHEDULE

The anticipated schedule for the **RFP** is as follows:

### SCHEDULE

<u>EVENT</u>	<u>DATE</u>
--------------	-------------

Advertised

October 29 and November 5, 2017

Pre-submission Conference

N/A

Receipt of Written Questions

November 7, 2017

Response to Written Questions

November 10, 2017

Submission Date

November 17, 2017

#### 4. DELIVERABLES

If submitting a hardcopy, one (1) original proposal and five (3) copies of the typewritten submission, including all required information, must be executed and submitted in a sealed envelope or package. Any handmade corrections made in the proposal must be initialed by the principal or authorized officer of the **Offeror**. The original proposal must bear the original signature of a principal or authorized officer of the **Offeror**.

Proposals may also be emailed as a PDF attachment to [paul.curry@hchatexas.org](mailto:paul.curry@hchatexas.org). If submitting an electronic copy, only one (1) proposal need be e-mailed. Electronic submission of the proposal shall be considered signed by a principal or authorized representative of the **Offeror**.

**Offerors** are solely responsible for ensuring that their proposals are actually received by the time and date stated. Receipt at **HCHA** after the due date and time specified will be cause for rejection.

##### Proposal Due Date/Time

Proposals must be submitted on or before **3:00 p.m. CST on November 17, 2017** in a bound and sealed envelope or package or by email attachment.

If submitting a hardcopy of the proposal, the face of the envelope or package must contain, in addition to the address below, the title “**Financial Services – Mortgage Refinancing. RFP #17-10R, Due Date and Time: November 17, 2017, 3:00 P.M. (CST), Name of Offeror \_\_\_\_\_**”. If submitting an electronic copy of the proposal, the subject line must contain the title “**Financial Services – Mortgage Refinancing. RFP #17-09R, Due Date and Time: November 17, 2017, 3:00 P.M. (CST), Name of Offeror \_\_\_\_\_**”.

##### Submission Place/Address

Proposals must be submitted to: **Paul Curry, Finance Director, Harris County Housing Authority, 8933 Interchange Drive, Houston, Texas 77054** or by email to [paul.curry@hchatexas.org](mailto:paul.curry@hchatexas.org).

Proposals by telegram, telephone, or facsimile, or handwritten proposals, will not be accepted by **HCHA**.

#### 5. PRICES AND TERMS

After receiving all responses, **HCHA/CE** shall select the response that is most advantageous to the **HCHA/CE** and then negotiate a fee schedule with the successful **Offeror**. If negotiations are unsuccessful, **HCHA/CE** will cease negotiations and commence fee negotiations with the next ranked

**Offeror** and so on.

## **6. GENERAL REQUIREMENTS**

All submittals must conform to requirements outlined herein. **HCHA/CE** reserves the option to require oral presentation by **Offeror(s)** and to request additional information during the proposal review period.

Submittals must be open and not subject to unilateral withdrawal or modification for ninety (90) days after the submittal due date.

All costs incurred, directly or indirectly, in preparing a response to this request for proposals shall be the sole responsibility of and shall be borne by the **Offeror**.

The successful **Offeror** shall:

- Complete written documentation of materials in a manner suitable for use by **HCHA** and **HUD** or governing entities as required.
- Meet with **HCHA/CE**, Harris County Community Services Division (**CSD**) and **HUD** and local officials as may be necessary.
- Coordinate all services with **HCHA/CE**.
- Coordinate all services with other parties as determined necessary by **HCHA/CE**.
- List the firms' name, contact person, telephone number, and profiles of expected participants in the performance of this service. The submittal must provide a timeline/schedule including tasks required to accomplish the proposed services. There may be subsequent instructions issued to the successful **Offeror** in connection with the final process. The proposal must make provisions to meet and comply with all applicable laws and regulatory criteria.

Provide a minimum of three (3) references using letters of reference from housing authorities for whom **Offeror** has provided financial services - mortgage refinancing in the past twelve (12) months. Provide the following:

Organization Name and Address  
Contact Person  
Telephone Number  
Email Address of Contact  
Dates of Service  
Brief Description of Service(s) Provided

## **7. CORRESPONDENCE**

Requests for additional information related to this **RFP** should be made in writing and emailed to the **HCHA's** Finance Director at [paul.curry@hchatexas.org](mailto:paul.curry@hchatexas.org) by **November 7, 2017**. This will allow time for the issuance of any necessary amendment(s) to the **RFP**.

An amendment may be issued prior to the opening of the proposals for the purpose of changing or clarifying the intent of this **RFP**. All amendments shall be binding in the same way as if originally written in this **RFP**. It is the responsibility of the **Offeror** to check the **HCHA** website for the issuance of

amendment(s).

Any interpretation affecting all **Offerors** made prior to the submittal due date will be issued in the form of an amendment. **HCHA/CE** will not be bound by or responsible for any other explanations or interpretations of this **RFP** package other than those given in writing as set forth in this paragraph. Oral instructions, interpretations, or representations will not be binding upon **HCHA/CE** or **HCHA/CE** representatives.

Sub-consultant(s) and others who have been requested by the consultant to assist in preparing a proposal shall obtain necessary information from the **Offeror**. They shall not directly contact **HCHA/CE** or **HCHA/CE** representatives for this information.

The agreement for these services will be awarded to one financial institution whose proposal after negotiations was judged to be the most advantageous to **HCHA/CE**.

## **8. DOCUMENT REQUIREMENTS**

The following is a description of the minimum information, which must be supplied by **Offerors** in their submittals. It is up to the **Offeror** to give such supplementary facts or materials that it considers may be of assistance in the evaluation of the proposal submitted. Proposals that omit critical elements may be considered non-responsive. Each proposal shall include a Table of Contents listing the proposal's contents. The critical elements of the proposal shall include the following information:

- I. Letter of Transmittal. Signed by the person authorized to commit the organization to perform the services in the proposal.
- II. Table of Contents.
- III. Executive Summary. Provide a brief non-technical overview of the financial institution including the range of services offered. **Offerors** should provide information reflecting how and why the institution's products and services meet **HCHA/CE**'s needs. List the institution's team members, roles, responsibilities, qualifications and identify primary contact person.
- IV. Name, title, email address, telephone and fax number of person(s) to be contacted for clarifications or request(s) for additional information regarding the offer.
- V. Name, title, email address, telephone and fax number of person(s) authorized to contractually obligate the financial institution and negotiate on behalf of the financial institution.
- VI. A brief statement summarizing the **Offeror**'s understanding, methodology/strategy to accomplish the requested services.
- VIII. **Offeror** shall provide an anticipated timeline to complete the refinancing transaction.
- IX. Term Sheet must include but is not limited to the following:

Name and address of Lender  
Primary Point of Contact  
Loan Amount  
Interest Rate

Loan Term  
Amortization Term  
Max. Loan to Value Ratio  
Min. Debt Service Coverage Ratio  
Origination Fee  
Due Diligence and Other Fees (inspections, appraisals, legal, etc.)  
Guarantee(s)  
Recourse  
Prepayment Penalties  
Forward Rate Lock Fee/Term  
Deposits requirement (if any)

X. References

XI. Certifications and Affidavits. **Offerors** shall submit executed originals of the following:

- A. "Attachment B:" Conflict of Interest Questionnaire
- B. "Attachment C:" Form of Non-Collusive Affidavit
- C. "Attachment D:" M/WBE Participation Form
- D. "Attachment H:" Certifications and Representations of **Offerors** for Non-Construction Contracts (Form HUD 5369-C)

9. **EVALUATION CRITERIA**

Proposals must be prepared in conformance with the guidelines stated herein.

Proposals will be evaluated by an Evaluation/Selection Committee. This committee will review the proposals and make a recommendation to Chief Executive Officer (CEO) and CE Manager. The CEO/Manager will present the recommendation to the Board of Commissioners of HCHA and Board of Directors of CE seeking approval to negotiate and execute all documents required to effectuate the refinancing of Cypresswood Estates.

HCHA reserves the right to call for supplemental information from **Offerors** and to meet with all or any one of them to clarify points of uncertainty or ambiguity. **Offerors** agree to cooperate fully and promptly in providing such supplemental information or meeting requests.

Selection of the successful **Offeror** will be at the sole discretion of HCHA/CE. All proposals shall be evaluated and up to three most qualified (top ranked), responsive and responsible financial institutions may be invited for panel interviews and discussions. If a contract is awarded, it will be awarded to the responsible **Offeror** whose qualifications and other factors are deemed most advantageous to HCHA/CE. Additionally, HCHA/CE shall have the right to reject any and all proposals at its discretion.

HCHA/CE reserves the right to negotiate all aspects of the term sheet.

**EVALUATION CRITERIA AND RATING**

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
1. Interest Rate	40
2. Loan to Value Ratio, DSCR and other underwriting criteria	30
3. Favorable Prepayment Penalties	10
4. Lender Profile, references and experience of key personnel	10
5. Schedule of performance/timeliness	10
<b>Total Points Possible</b>	<b>100</b>

Proposals will be evaluated and ranked according to points received.

#### **10. AVAILABILITY OF RECORDS**

**HCHA/CE** and any duly authorized representative (which may include, but not be limited to, the U.S. Department of Housing and Urban Development, the Inspector General of the United States, and/or Harris County), shall have access to, and the right to examine any and all pertinent books, records, documents, papers, and the like, of the successful **Offeror's** office or firm, which shall relate to the performance of the services to be provided.

#### **11. ASSIGNMENT OR TRANSFER**

The successful Offeror shall not assign or transfer any interest in the contract in whole or in part without written approval of **HCHA**.

#### **12. CONTRACT AWARD – TERM SHEET**

Acceptance of the offer for the services specified herein will be made by negotiating and executing a duly authorized Term Sheet . All **Offerors** are cautioned against making assumptions or accepting any representation by any employee, member, officer or representative of **HCHA/CE** concerning the selection of the successful **Offeror** until the agreement has been finally negotiated and executed.

The term sheet providing said services must be approved by the Board of Commissioners of **HCHA** and the Board of Directors of **CE**.

#### **13. STANDARDS OF CONDUCT**

The successful **Offeror** shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, integrity, and shall be responsible for taking such

disciplinary action with respect to any employee, as may be necessary.

#### **14. CONFLICT OF INTEREST**

No employee, officer or agent of **HCHA/CE** shall participate directly or indirectly in the selection or in the award of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in an agency selected for award is held by:

- An employee, officer or agent involved in making the award; or
- His/her relative including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister; or
- His/her business or professional partner; or
- An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

#### **15. STATEMENT OF OWNERSHIP**

The offer shall contain the legal name of the financial institution with whom **HCHA/CE** will contract by: name, address, phone number, and name of principal person assigned to negotiate on behalf of the **Offeror**.

#### **16. M/WBE PARTICIPATION**

The successful **Offeror** agrees to make its best efforts to subcontract with minority business enterprises and/or women business enterprises (herein called **M/WBE**) certified as such or recognized by **HCHA** as a certified **M/WBE**.

#### **17. PERTINENT FEDERAL REGULATIONS WITH REGARD TO NONDISCRIMINATION AND EQUAL OPPORTUNITY**

The requirements of Title VIII of the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964, relating to prohibitions against discrimination in housing and the benefits of federally funded programs because of race, color, religion, sex or national origin must be met by the successful **Offeror**.

The successful **Offeror** must adhere to federal regulations prohibiting discrimination on the basis of age under the Age Discrimination Act of 1975, and prohibit discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1989.

The requirements of Executive Order 11246, relating to equal employment opportunity in connection with federally funded programs must be met by the successful **Offeror**.

The successful **Offeror** must also meet the requirements of Section 3 of the Housing and Urban Development Act of 1968, relating to the training and employment of individuals, and contracting for business opportunities in metropolitan areas in which federally funded programs are being operated.

The successful Offeror must meet the requirements of Executive Orders 11625, 12432, and 12138 relating to the use of minority and women's business enterprises in connection with federally funded programs.



## **ATTACHMENT A**

### **GENERAL SCOPE OF SERVICES**

The Harris County Housing Authority (**HCHA**) on behalf of the HCHA Cypresswood Estates, LLC (“**CE**”) hereby solicits proposals from qualified financial institutions to refinance the existing mortgage for Cypresswood Estates. **CE** is seeking competitive refinancing terms to refinance the existing indebtedness of \$3,300,000.00 and to provide cash out funds. The targeted loan amount is \$4,700,000.00 to \$5,000,000.00 as specified in this Request for Proposal (RFP).

**Cypresswood estates is located at 15331 Kuykendahl, Houston, TX 77091.**

Cypresswood estates is comprised of 36 - 1 bedroom/1 Bath units and 52- 2 bedroom/2 bath units that range in size from 854 ft.<sup>2</sup> to 1088 ft.<sup>2</sup>. Cypresswood estates consist of 9 Villas and 2 multistory buildings and an office clubhouse building. Cypresswood Estates is wood frame with stucco/brick veneer construction. It is a LEED Platinum certified development situated on 9.9 acres of land. Cypresswood Estates was constructed in 2011. Cypresswood Estates serves elderly households meeting the following income tiers:

30% AMI

50% AMI

65% AMI

80% AMI

Market Rate Units

**ATTACHMENT B**  
**CONFLICT OF INTEREST QUESTIONNAIRE (CIQ)**

**ATTACHMENT C**

**FORM OF NON-COLLUSIVE AFFIDAVIT**

STATE OF TEXAS

COUNTY OF HARRIS

\_\_\_\_\_, being first duly sworn, deposes and says that he is

\_\_\_\_\_  
(a partner of officer of the firm of, etc.)

of the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person to fix the bid price or affiant or of any other bidder, or to fix any overhead, profit, or cost element of said bid price, or of that of any other bidder, or to secure any advantage against

**THE HARRIS COUNTY HOUSING AUTHORITY**

or of any person interested in the proposed Contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
Signature of Bidder, if Bidder is an Individual

\_\_\_\_\_  
Signature of Bidder, if Bidder is a Partnership

\_\_\_\_\_  
Signature of Officer, if Bidder is a Corporation

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2017

Notary Public

My Commission expires: \_\_\_\_\_

## **ATTACHMENT D**

### **M/WBE PARTICIPATION**

**M/WBE PARTICIPATION:** The consultant agrees to make its best efforts to subcontract with minority business enterprises and/or women business enterprises (herein called M/WBE) certified as such or recognized by HCHA as a certified M/WBE. Consultant shall make its best efforts to subcontract a sufficient dollar amount with M/WBEs to ensure that a minimum of 30 percent of the final contract dollars are expended on one or more M/WBEs. All adjustments that cause the contract price to increase will also increase the total amount that Consultant must make its best efforts to expend on M/WBEs.

**USING BEST EFFORTS TO FULFILL M/WBE REQUIREMENT:** In the event HCHA has a reasonable belief that Consultant will not use his/her/its best efforts to meet the 30 percent M/WBE participation goal, HCHA reserves the right to pull work from the contract. Best efforts may be established by showing that Consultant has contacted and solicited bids/quotes from subcontractors and worked with HCHA to seek assistance in identifying M/WBEs.

**FAILURE TO USE YOUR BEST EFFORTS TO COMPLY MAY CONSTITUTE BREACH OF CONTRACT AND SUBJECT THE CONTRACT TO TERMINATION.**

**NOTIFICATION OF M/WBE PARTICIPATION:** Consultant agrees to promptly complete and return all M/WBE Confirmation of Participation and M/WBE Confirmation of Payment forms utilized by HCHA to confirm M/WBE subcontractor by submitting copies of checks made payable to the respective M/WBE subcontractor signed by the successful Offeror.

---

CONSULTANT

---

DATE

**ATTACHMENT D**

**Instructions to Offerors for Non-Construction  
Contracts (Form HUD-5369-B)**

# Instructions to Offerors Non-Construction

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing



- 03291 -

## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### **8. Service of Protest**

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### **9. Offer Submission**

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

---

**ATTACHMENT E**

**Certifications and Representations of Offerors for  
Non-Construction Contracts (Form HUD 5369-C)**



# Certifications and Representations of Offerors Non-Construction Contract

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

OMB Approval No: 2577-0180 (exp. 7/30/96)

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

## 1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and
- (2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

## 2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

#### **4. Organizational Conflicts of Interest Certification**

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

#### **5. Authorized Negotiators (RFPs only)**

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

#### **6. Conflict of Interest**

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

#### **7. Offeror's Signature**

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

---

Signature & Date:

---

Typed or Printed Name:

---

Title:

---

---

**ATTACHMENT F**

**General Conditions for Non-Construction  
Contracts (Form HUD-5370-C)**

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of Labor Relations  
OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

### Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

#### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 classifications and wage rates approved by HUD under subparagraph 1(b), 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.
- (b) (i) 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 only when the following criteria have been met:
  - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to 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.

#### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD 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.

#### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
  - (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

#### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
  - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/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 OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
  - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
- (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
  - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **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 he or she 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.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), 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 the 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 provisions set forth in paragraph (a) of this clause, in the sum of \$10 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 provisions set forth in paragraph (a) of this clause.

(c) **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 U.S. 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 federal contract with the same prime Contractor, 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 provisions set forth in paragraph (b) of this clause.

**7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

**8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

---

**ATTACHMENT H**

**Certification of Payments to Influence Federal Transactions**

Certification of Payments
to Influence Federal Transactions

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Form section for Name of Authorized Official, Title, Signature, and Date (mm/dd/yyyy).

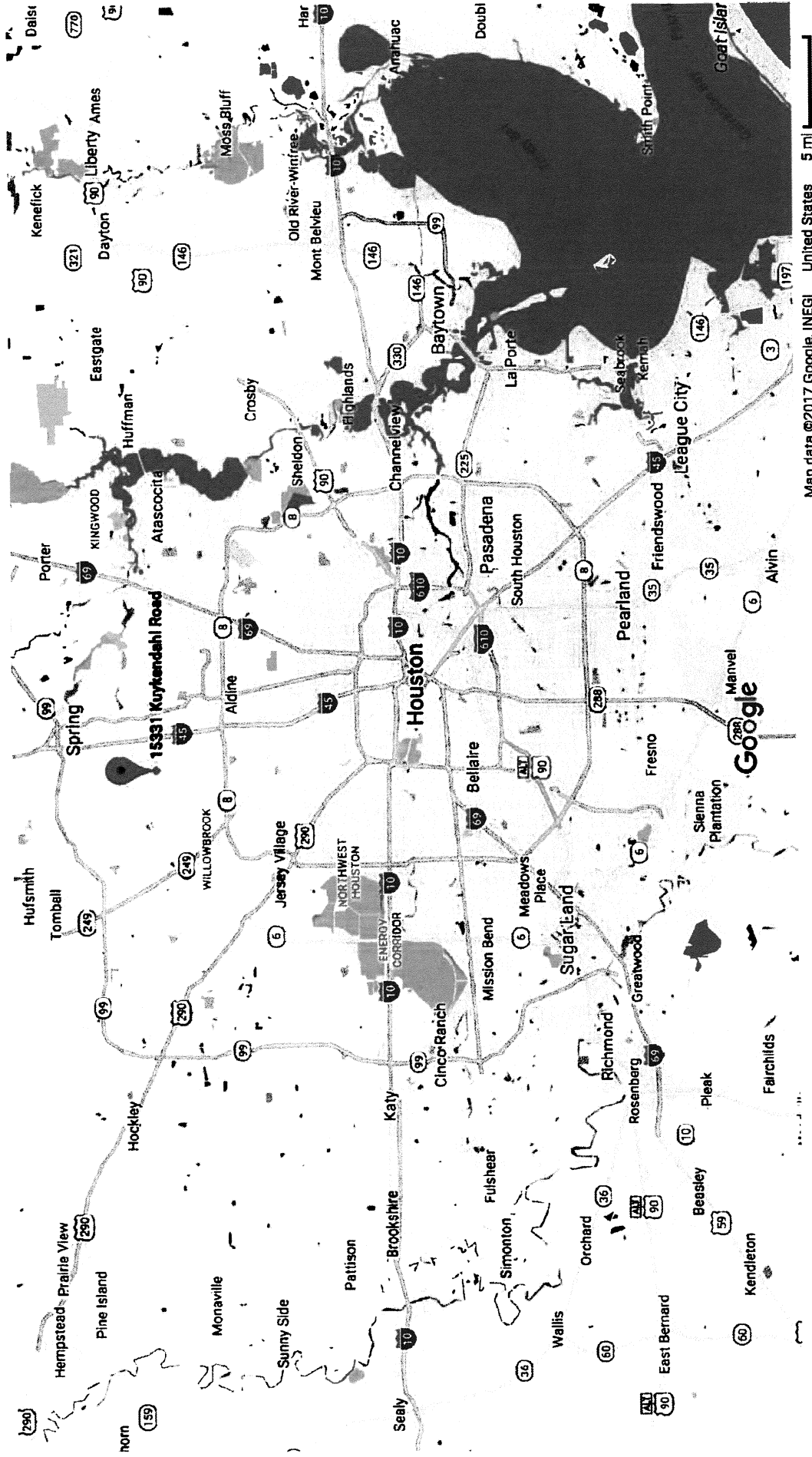


---

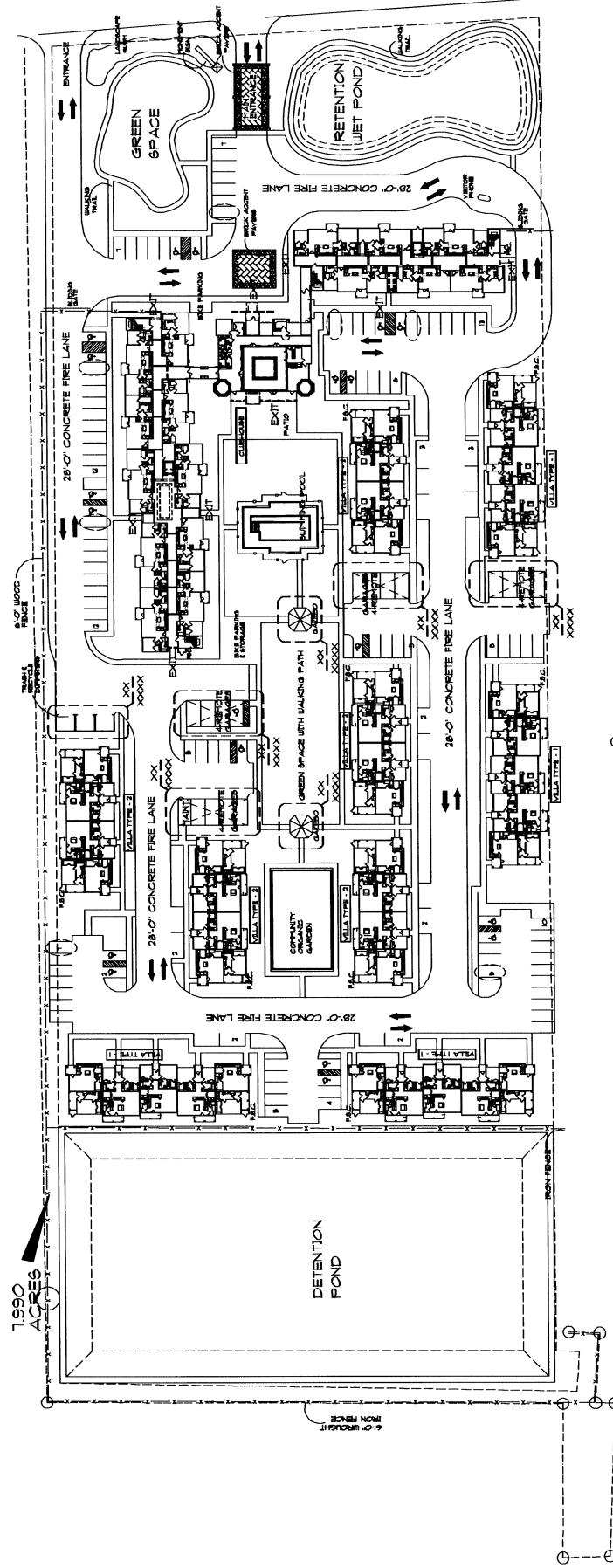
**Attachment I**

**Site Plan, Unit Plans and Photographs**

# Google Maps 15331 Kuykendahl Rd



1.990  
ACRES



KUYKENDAHL ROAD

HYBRID/FUEL EFFICIENT PARKING SPACE - 54

CYPRESSWOOD ESTATES - HARRIS COUNTY, TEXAS

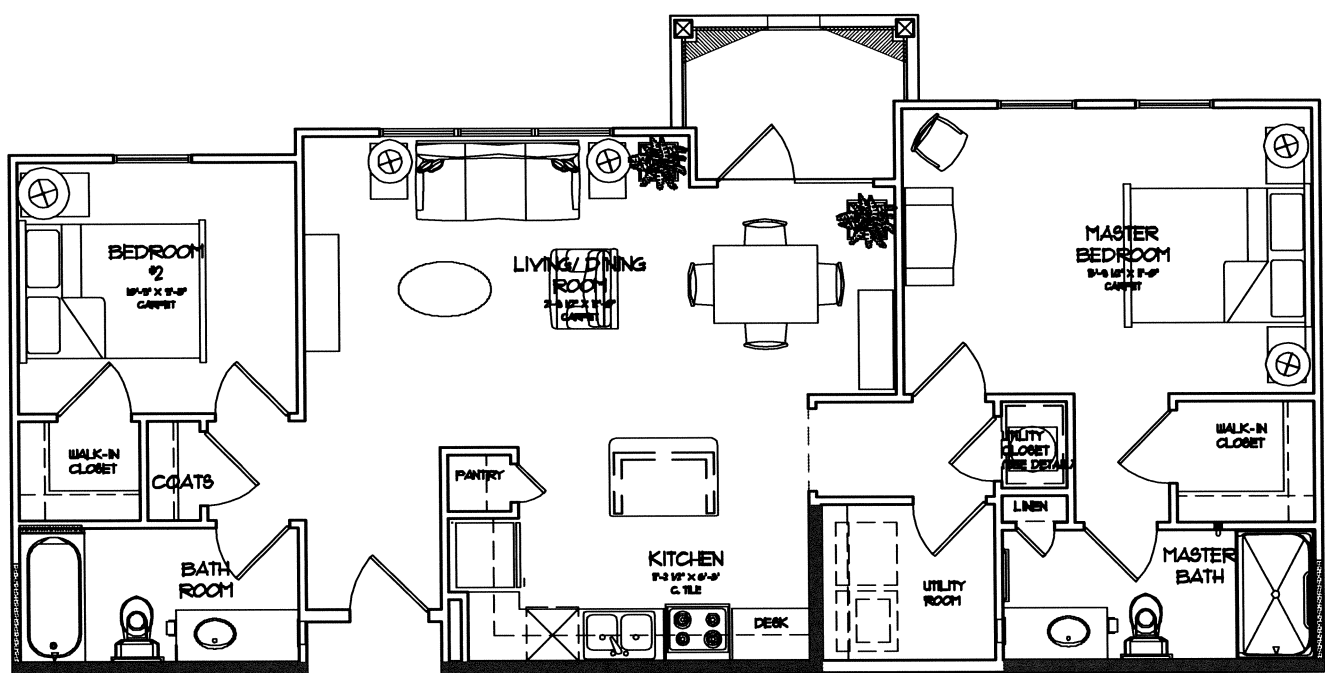
PROPOSED PARKING CHART:

104 TOTAL SURFACE SPACES
20 PARALLEL SURFACE SPACES (GUESTS)
16 REMOTE GARAGE SPACES
TOTAL PARKING SPACES = 140

SITE PLAN

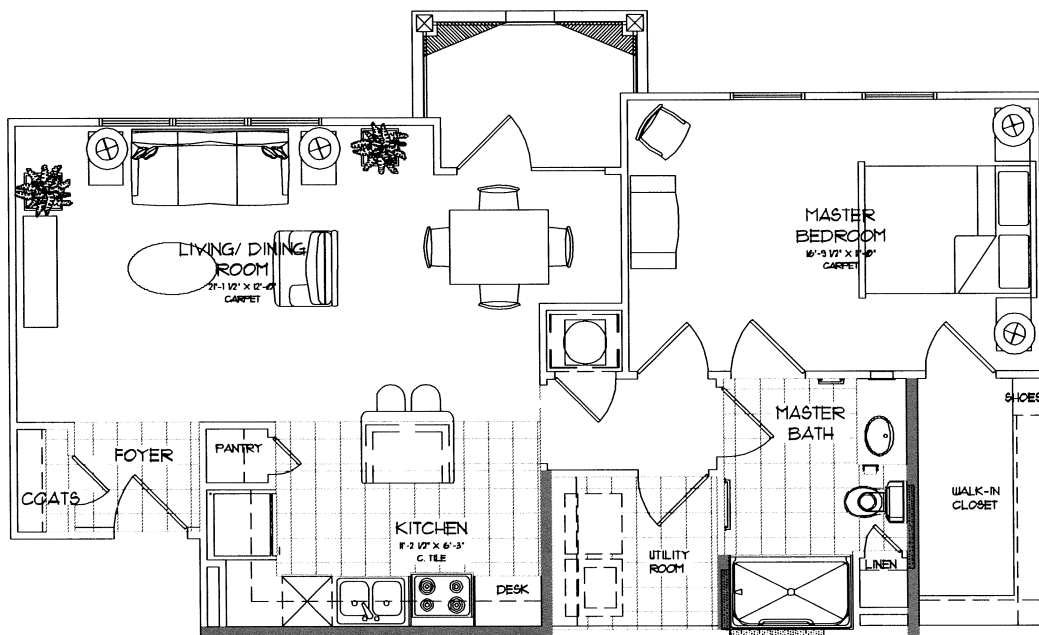
SCALE 0' 10' 20' 40' 100'





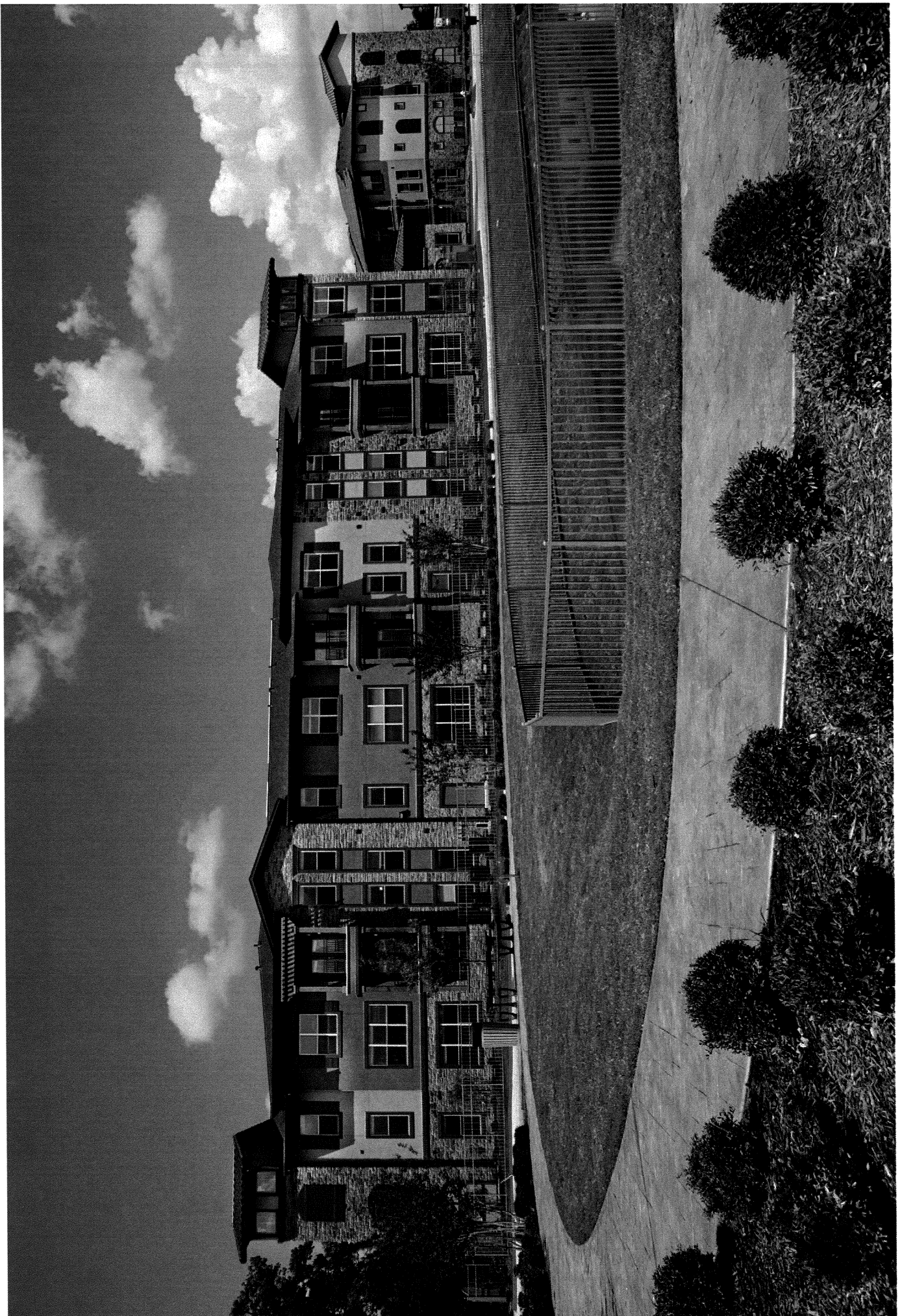
## UNIT B-1

TWO BEDROOM - TWO BATH  
NET RENTABLE: 1,080 S.F.

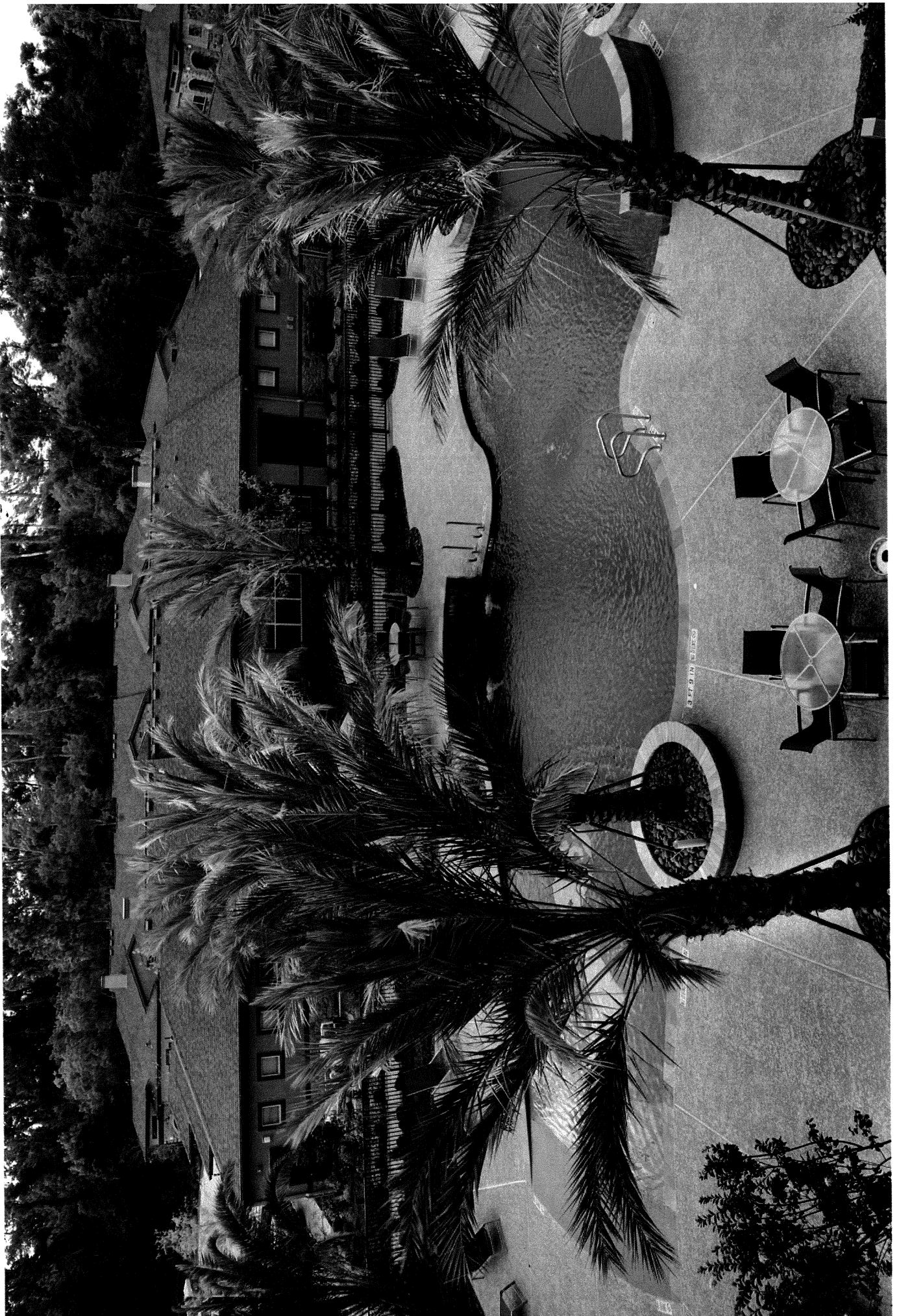


## UNIT A-1

ONE BEDROOM - ONE BATH  
NET RENTABLE: 905 S.F.











---

**Attachment J**

**Promissory Note and Neighborhood Stabilization Program (NSP) Funds Second Amendment**

We hereby certify this to be a true and correct copy of the original instrument.

AMERICAN TITLE COMPANY

By \_\_\_\_\_

PROMISSORY NOTE  
(this "Note")

US \$3,500,000.00

March 13<sup>th</sup>, 2013

*jm*

FOR VALUE RECEIVED, HCHA CYPRESSWOOD ESTATES, LLC, a Texas limited liability company ("**Borrower**"), jointly and severally (if more than one), promises to pay to the order of COMMUNITYBANK OF TEXAS, N.A. (together with any subsequent holder of this Note, the "**Lender**"), at 5999 Delaware, Beaumont, Texas 77706-7607, Attention: Mahesh S. Aiyer, or such other place as may be designated by written notice to Borrower from or on behalf of Lender, the principal sum of Three Million Five Hundred Thousand and No/100 Dollars (US \$3,500,000.00), or so much thereof as may be advanced, with interest on the unpaid principal balance at the interest rates as hereafter provided. Interest accruing under this Note shall be computed on the basis of a 360-day year and the actual number of days elapsed for any whole or partial month.

1. Definitions. As used in this Note, in addition to capitalized terms defined elsewhere in this Note, the following terms shall have the meanings set forth below:

"**First Payment Date**" shall mean May 1, 2013.

"**Loan Agreement**" means the Letter Loan Agreement of even date herewith, between Borrower and Lender, as may be modified, amended, supplemented, and restated.

"**Maturity Date**" means March 8, 2018 (as may be amended and extended pursuant to the Loan Agreement).

"**Maximum Rate**" means the maximum non-usurious rate of interest permitted to be charged, contracted for, received, or collected by applicable federal or Texas law (whichever shall permit the higher lawful rate from time to time in effect). At all times, if any, as the Texas Finance Code (as it may from time to time be amended, the "Texas Finance Code") establishes the highest lawful rate, the Maximum Rate shall be the "applicable weekly ceiling" from time to time in effect thereunder. Lender may from time to time implement any other ceiling permitted under applicable law and/or revise the index, formula or provision of law used to compute the rate on such obligation, if and to the extent permitted by, and in the manner provided under applicable law.

"**Stated Rate**" means a fixed rate per annum equal to four and one-quarter percent (4.25%).

2. Interest. Interest will accrue on the outstanding principal balance of this Note at the Stated Rate.

3. Payment of Principal and Interest.

(a) This Note shall be due and payable as follows:

(i) Monthly Payments. Commencing on the First Payment Date, and continuing on the first day of each succeeding calendar month thereafter through but not including the Maturity Date, equal monthly installments of principal and interest in the amount of \$17,217.90 each, shall be due and payable. Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due; and

(ii) Maturity. The entire unpaid principal sum of this Note and all interest accrued and unpaid thereon shall be fully and finally due and payable on the Maturity Date.

Each payment due hereunder shall not be deemed received by Lender until received on a Business Day (as hereafter defined) in U.S. Dollars immediately available to Lender prior to 2:00 p.m. local time at the place then designated by Lender. Any payment received on a Business Day after the time established by the preceding sentence, shall be deemed to have been received on the immediately following Business Day for all purposes, including, without limitation, the accrual of interest on principal. Any regularly scheduled payment of interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due. For purposes of this Note, a "**Business Day**" means any day other than a Saturday, Sunday or any other day on which national banks in the Property Jurisdiction (hereafter defined) are not open for all normal business activities.

4. Application of Payments. Payments under this Note shall be applied first to the payment of accrued but unpaid interest, then to the payment of late fees and other costs and charges due in connection with this Note, in the order that Lender determines in its sole discretion, and then to reduction of the outstanding principal balance (in inverse order of maturity whether or not then due). No principal amount repaid may be reborrowed. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever. Borrower agrees that in the event payoff is to be by wire transfer, Borrower shall provide Lender notice prior to transferring the funds no later than the day of such wire transfer. In the event Borrower fails to notify Lender of such wire transfer, Borrower shall pay to Lender a penalty in the amount of \$250.00. All funds for payoffs (whether by certified check or wire transfer) must be received by Lender no later than 2:00 p.m. (Lender's time).

5. Security. The indebtedness evidenced by this Note (the "**Indebtedness**") is secured by, among other things, a Multifamily Leasehold Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement executed by Borrower and dated as of the date of this Note (the "**Security Instrument**"), and reference is made to the Security Instrument for other rights of Lender concerning the collateral for the Indebtedness. All documents other than this Note and the Security Instrument to or of which Lender is a party or a beneficiary now or hereafter evidencing, securing, guarantying or modifying

the Indebtedness, and all extensions, renewals and modifications thereof, are collectively referred to herein as the "Other Security Documents."

6. Event of Default and Acceleration. During the continuation of an Event of Default under and as defined in the Security Instrument shall constitute an Event of Default under and for purposes of this Note. Except as provided for in the Security Instrument and/or the Other Security Documents, if an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, if any, and all other amounts payable under this Note, the Security Instrument and any Other Security Documents shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except as may be required by the Loan Agreement, the Security Instrument, and/or the Other Security Documents). Lender may exercise this option to accelerate regardless of any prior forbearance. The remedies of Lender in this Note, the Security Instrument and the Other Security Documents, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively or together in Lender's sole discretion and as often as occasion therefor shall arise.

7. Late Charge. If any monthly amount payable under this Note or under the Security Instrument or any Other Security Document is not received by Lender within fifteen (15) days after the scheduled due date, Borrower shall pay to Lender, promptly and without demand by Lender, a late charge equal to five percent (5.0%) of such amount of such monthly installment or \$50, whichever is greater. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Indebtedness, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Paragraph represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Paragraph 9.

8. Default Rate. Notwithstanding the terms of Section 2 and Section 3 above, during the continuation of an Event of Default, interest under this Note shall accrue on the unpaid principal balance from the due date of the first unpaid monthly installment or other payment due, as applicable, at a rate (the "Default Rate") equal to the lesser of (a) 5 percentage points above the Stated Rate or (b) the Maximum Rate which may be collected from Borrower under applicable law. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Borrower also acknowledges that an Event of Default will materially increase Lender's risk and/or cause Lender to incur additional expenses in servicing and processing the Indebtedness arising from its loss of the use of the money due, and that it is extremely difficult and impractical to determine those additional risks, costs and expenses. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses

Lender will incur by reason of an Event of Default and the additional compensation Lender is entitled to receive for the increased risks of any nonpayment associated therewith.

9. Voluntary and Involuntary Prepayments. Borrower may prepay without penalty the unpaid principal balance in whole or in part, by paying, in addition to the entire unpaid principal amount, all accrued interest and any other sums due Lender at the time of prepayment.

10. Costs and Expenses; Judgment Interest. Borrower shall pay on demand all reasonable expenses and costs, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses and reasonable costs of investigation, incurred by Lender in connection with efforts to collect any amount due under this Note, or to enforce the provisions of the Security Instrument or any of the Other Security Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. Interest shall accrue on any judgment obtained by Lender in connection with the enforcement or collection of this Note until such judgment amount is paid in full at a rate equal to the greater of (a) the Default Rate or (b) the legal rate applicable to judgments within such jurisdiction; provided, however, that interest shall not accrue at a rate in excess of the Maximum Rate.

11. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any Other Security Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any

payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment or constitute or be deemed to constitute either a waiver of the unpaid amounts, an accord and satisfaction, or a novation of this Note. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender. Lender may release any guarantor, surety or indemnitor of this Note from liability, in every instance without the consent of Borrower hereunder and without waiving any rights which Lender may have hereunder or under the Security Instrument or any of the Other Security Documents or under applicable law or in equity.

12. Waivers. Except as provided for in the Loan Agreement, this Note, the Security Instrument, and/or Other Security Documents, presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are, to the fullest extent permitted by applicable law, waived by Borrower, and all endorsers of this Note. Except as provided for in the

Loan Agreement, the Security Instrument, and/or the Other Security Documents, Borrower hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any moratorium, reinstatement, marshaling, forbearance, valuation, stay, extension, redemption, appraisal, exemption and homestead now or hereafter provided by the Constitution and laws of the United States of America and of each state thereof, both as to party and property (real and personal), against the enforcement and collection of the Indebtedness.

13. **Loan Charges.** Lender does not intend to contract for, charge or receive more than the Maximum Rate of interest or the maximum amount of interest that is permissible under applicable state or federal law for the type of loan evidenced by this Note, the Security Instrument and the Other Security Documents. To prevent such an occurrence, Lender and Borrower agree that all amounts of interest, whenever contracted for, charged or received by Lender, with respect to the loan of money evidenced by this Note, shall be spread, prorated or allocated over the full period of time this Note is unpaid, including the period of any renewal or extension of this Note. If demand for payment of this Note is made by Lender prior to the full stated term, the total amount of interest contracted for, charged or received to the time of such demand shall be spread, prorated or allocated along with any interest thereafter accruing over the full period of time that this Note thereafter remains unpaid for the purpose of determining if such interest exceeds the maximum lawful amount. At maturity (including maturity due to Lender's acceleration of this Note) or on earlier final payment of this Note, Lender shall compute the total amount of interest that has been contracted for, charged or received by Lender or payable by Borrower under this Note and compare such amount to the maximum lawful amount that could have been contracted for, charged or received by Lender. If such computation reflects that the total amount of interest that has been contracted for, charged or received by Lender or payable by Borrower exceeds the maximum lawful amount, then Lender shall apply such excess to the reduction of the principal balance and not to the payment of interest; or if such excess interest exceeds the unpaid balance, such excess shall be refunded to Borrower. This provision concerning the crediting or refunding of excess interest shall control and take precedence over all other agreements between Borrower and Lender so that under no circumstances shall the total interest contracted for, charged or received by Lender exceed the Maximum Rate.

14. **Counting of Days; Time of Essence.** Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days. Time is of the essence with respect to all provisions of this Note.

15. **Non-Recourse.**

(a) Except as otherwise provided in this Section 15, Borrower and its partners shall have no personal liability under this Note, the Loan Agreement, the Security Instrument, or any Other Security Document or under any other document related to this transaction for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under this Note, the Security Instrument, and/or the Other Security Documents, and Lender's only recourse for the satisfaction of the

Indebtedness and the performance of such obligations, shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any reasonable out-of-pocket loss or damage suffered by Lender as a result of (i) failure of Borrower to pay to Lender upon demand after an Event of Default, all Rents (as that term is defined in the Security Instrument and is hereafter used) to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of the current and non-forfeited security deposits collected by Borrower from tenants then in residence; (ii) failure to pay any amounts due under Section 18(g) and (j) of the Security Instrument; (iii) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (iv) willful failure of Borrower to comply with Section 14(d) or (e) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports; (v) fraud or written material misrepresentation by Borrower, or any officer, director, partner, or member of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender; or (vi) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other agreement of Borrower with Lender executed in connection with the loan evidenced by this Note) and then to amounts ("**Debt Service Amounts**") payable under this Note, the Security Instrument, and/or any Other Security Document (except that Borrower will not be personally liable (1) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (2) with respect to Rents that are distributed for any calendar year if Borrower has paid all operating expenses for that calendar year).

(c) Borrower shall become personally liable to Lender for the repayment of all of the Note upon the occurrence of any of the following Events of Default: (i) other than de minimis personal property, Borrower's acquisition of any property or operation of any business not permitted by Section 33 of the Security Instrument; or (ii) a transfer that is an Event of Default under Section 22 of the Security Instrument.

(d) To the extent that Borrower has personal liability under this Section 15, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Loan Agreement, the Security Instrument, any Other Security Document or applicable law. For purposes of this Section 15, the term "**Mortgaged Property**" shall have the same meaning as said term is defined to have in the Security Instrument but shall not include any funds that (i) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default, or (ii) Borrower was unable to apply as required or permitted by the

Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding.

(e) Nothing set forth in this Section 15 shall impair the lien of the Security Instrument.

(f) The members of Borrower shall not have any personal liability under this Note or any of the Other Security Documents except as provided for under the Texas Business Organizations Code.

16. Negotiable Instrument. Borrower agrees that this Note shall be deemed a negotiable instrument, even though this Note, absent this paragraph, may not otherwise qualify as a negotiable instrument under applicable law.

17. Sale of Loan by Lender. Lender shall have the right to transfer, sell or assign this Note, the Security Instrument and the Other Security Documents, and the obligations of Borrower hereunder.

18. Notices. All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with the Security Instrument.

19. Captions, Etc. The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note. This Note, together with the Security Instrument and the Other Security Documents, contain the entire agreement between Borrower and Lender relating to the subject matter thereof, and supersede all prior discussions and agreements (oral or written) which are not contained therein. Neither this Note nor the Security Instrument nor any of the Other Security Documents may be changed, waived, supplemented, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement thereof is sought and then only to the extent expressly set forth in such writing. Any provision of this Note, the Security Instrument or the Other Security Documents which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

20. Governing Law. This Note shall be governed by the law of the jurisdiction in which the real property encumbered by the Security Instrument is located (the "Property Jurisdiction"), without giving effect to its conflict of laws rules. **NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS NOTE, THE SECURITY INSTRUMENT, AND/OR ANY OF THE OTHER SECURITY DOCUMENTS, BORROWER AND LENDER HEREBY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN TEXAS SHALL HAVE EXCLUSIVE JURISDICTION AND VENUE WITH RESPECT TO ALL ACTIONS BROUGHT BY OR**



**AGAINST ANY PARTY UNDER OR PURSUANT TO THIS NOTE, THE SECURITY INSTRUMENT, AND/OR ANY OF THE OTHER SECURITY DOCUMENTS, AND BORROWER AND LENDER HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND TO SERVICE OF PROCESS, EFFECTIVE UPON RECEIPT BY PERSONAL SERVICE, OVERNIGHT EXPRESS DELIVERY OR REGISTERED OR CERTIFIED MAIL.**

21. Other Agreements. This Note is the Note under and as defined in the Loan Agreement. All payments of principal with respect to such loan shall be evidenced by notations made by Lender on a schedule for this Note, and replacements therefor, such schedule to set forth the date and amount of each of the payments of principal on this Note. The aggregate unpaid amount of the loan set forth on the schedule and replacements therefor, shall be rebuttably presumptive evidence of the principal amount owing and unpaid on this Note.

**BORROWER COVENANTS AND AGREES TO ASSUME LIABILITY FOR AND TO PROTECT, INDEMNIFY AND SAVE THE LENDER HARMLESS FROM ANY AND ALL REASONABLE LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, CAUSE OF ACTION, COSTS, CHARGES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES OF EMPLOYEES, WHICH MAY BE IMPOSED, INCURRED BY OR ASSERTED AGAINST THE LENDER BY REASON OF ANY LOSS, DAMAGE OR CLAIM HOWSOEVER ARISING OR INCURRED BECAUSE OF OR OUT OF OR IN CONNECTION WITH (I) ANY ACTION OF THE LENDER PURSUANT TO REQUESTS FOR ADVANCES UNDER THIS NOTE, OR (II) THE TRANSFER OF FUNDS PURSUANT TO SUCH. LENDER IS ENTITLED TO RELY UPON AND ACT UPON REQUESTS MADE OR PURPORTEDLY MADE BY ANY OF THE OFFICERS OF BORROWER AUTHORIZED UNDER THE TERMS OF THE LOAN AGREEMENT, AND BORROWER SHALL BE UNCONDITIONALLY AND ABSOLUTELY ESTOPPED FROM DENYING (I) THE AUTHENTICITY AND VALIDITY OF ANY SUCH TRANSACTION SO ACTED UPON BY LENDER ONCE THE LENDER HAS ADVANCED FUNDS UNDER THIS NOTE AND HAS DEPOSITED OR TRANSFERRED SUCH FUNDS AS REQUESTED IN ANY SUCH REQUEST, AND (II) BORROWER'S LIABILITY AND RESPONSIBILITY THEREFOR. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN THE SECURITY INSTRUMENT, AND/OR ANY OF THE OTHER SECURITY DOCUMENTS, THIS PARAGRAPH SHALL NOT APPLY TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER, OR ANY OTHER INDEMNIFIED PERSON (AS DEFINED IN THE SECURITY INSTRUMENT).**

**NOTICE: THIS NOTE AND ALL OTHER DOCUMENTS RELATING TO THE INDEBTEDNESS EVIDENCED HEREBY CONSTITUTE A WRITTEN LOAN AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES RELATING TO THIS NOTE AND THE INDEBTEDNESS EVIDENCED HEREBY.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

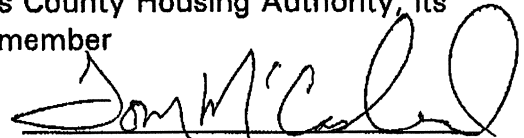
IN WITNESS WHEREOF, Borrower has signed or has caused to be signed by its duly authorized representative effective as of the date first stated above.

**Borrower:**

HCHA CYPRESSWOOD ESTATES, LLC, a  
Texas limited liability company

By: Harris County Housing Authority, its  
sole member

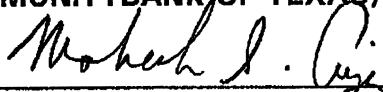
By:

  
Tom McCasland,  
~~Manager~~ CEO

AGREED TO AND ACKNOWLEDGED  
FOR PURPOSES OF SECTION 26.02 OF  
THE TEXAS BUSINESS AND  
COMMERCE CODE:

COMMUNITYBANK OF TEXAS, N.A.

By:

  
Mahesh S. Aiyer,  
Executive Vice President







**HARRIS COUNTY, TEXAS**  
**COMMUNITY SERVICES DEPARTMENT**

**David B. Turkel**  
*Director*  
**Daphne Lemelle**  
*Community Development Director*

**Office of Housing & Community Development**  
8410 Lantern Point Drive  
Houston, Texas 77054  
Tel (713) 578-2000  
Fax (713) 578-2269

October 17, 2011

County Judge Emmett and  
Commissioner Lee, Morman, Radack, and Cagle

**AGENDA LETTER**

Please consider the following item on the Commissioners Court Agenda for October 25, 2011:

Approval of the attached Second Amendment to Agreement, prepared by the County Attorney, between Harris County and Harris County Housing Authority for the Cypresswood Estates Project. The Second Amendment adds \$1,663,660.85 in Home Investment Partnership Program (HOME) funds; \$450,000.00 in Neighborhood Stabilization Program (NSP) funds; and \$863,721.15 in leveraged funds for a total project budget of \$14,251,161.00 as well as revises the unit designation to Fixed Units and incorporates HOME regulations. The Project is located at 15331 Kuykendahl Road, Houston, Texas 77014, in Precinct 4.

Thank you for your assistance with this request.

**Vote of the Court:**

	Yes	No	Abstain
Judge Emmett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Morman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sincerely,

*Daphne Lemelle*

*bt* David B. Turkel, Director  
Community Services Department

DBT/dl/erw/dw/gs

11 OCT 19 AM 8:34  
HARRIS COUNTY  
MANAGEMENT SERVICES

20 ATF

Comm Serv. copy

Budget (Kathleen) copy

Presented to Commissioner's Court

OCT 25 2011

APPROVE LM

Recorded Vol \_\_\_\_\_ Page \_\_\_\_\_

# **HARRIS COUNTY COMMUNITY SERVICES DEPARTMENT**

## **EXECUTIVE SUMMARY**

### **SECOND AMENDMENT TO AGREEMENT**

October 25, 2011

On May 5, 2009, Commissioners Court approved an agreement between Harris County and the Harris County Housing Authority (HCHA) in the amount of \$847,141.00 in Neighborhood Stabilization Program (NSP) funds for the acquisition of bank-owned property for the construction of Cypresswood Estates project, an 88-unit multi-family LEED certified senior rental housing complex located at 15403 Kuykendahl Road, Houston, Texas in Precinct 4.

On August 11, 2009, Commissioners Court approved the following:

- First Amendment to Agreement between Harris County and Harris County Housing Authority adding \$3,152,859.00 of NSP funds to partially fund development and construction costs for the Cypresswood Estates Senior Housing Project; and
- Agreement between Harris County and Harris County Housing Authority utilizing \$5,574,826.00 in CDBG Disaster Recovery Program (CDBG-DRP) funds for the partial funding of development and construction costs of the Cypresswood Estates Senior Housing Project.

The Harris County Community Services Department and HCHA now desire that the NSP Agreement of May 5, 2009 and subsequent Amendment on August 11, 2009 be made a part of the CDBP-DRP Agreement of August 11, 2009.

The Harris County Community Services Department and HCHA now further desire to amend said Agreements in order to: 1) add Home Investment Partnership (HOME) Program funds in the amount of \$1,663,660.85; Neighborhood Stabilization Program (NSP) funds in the amount of \$450,000; and leveraged funds in the amount of \$863,721.15 for a total project budget of \$14,251,161.00; 2) revise the assisted units to a fixed unit designation; and 3) incorporate HOME regulations.

The additional funds will result in a total of seventy-five (75) Harris County-assisted units for low-income and very low-income households.

Attached for Commissioners Court review and approval is the Second Amendment to Agreement between Harris County and HCHA for the above described project.

**SECOND AMENDMENT TO AGREEMENT BETWEEN HARRIS COUNTY  
AND HARRIS COUNTY HOUSING AUTHORITY FOR THE CYPRESSWOOD  
ESTATES PROJECT**

**RECITALS**

WHEREAS, HARRIS COUNTY, a body corporate and politic under the laws of Texas, hereinafter referred to as the "Grantee", and Harris County Housing Authority, herein called the "Subrecipient", entered into an Agreement on May 5, 2009 to administer Neighborhood Stabilization Program (NSP) funds for the purpose of granting such funds to the Subrecipient for the acquisition of foreclosed land for the development of an 88-unit apartment complex (the "Project") for very low and low-income senior citizens age 55 or older and maintain ownership of the Project at the completion of construction; and

WHEREAS, on August 11, 2009, Commissioners Court approved an Amendment to said Agreement of May 5, 2009 adding additional NSP funds in the amount of \$3,152,859.00 and additionally approved an Agreement that utilized Community Development Block Grant (CDBG) Program and Disaster Recovery Program (DRP) funds in the amount of \$5,574,826.00 to partially fund costs associated with the acquisition, development and construction of the Project.

WHEREAS, the Grantee and the Subrecipient now desire that the NSP Agreement of May 5, 2009 and subsequent Amendment on August 11, 2009 be made a part of the CDBP-DRP Agreement of August 11, 2009; and

WHEREAS, the Grantee and the Subrecipient now desire to amend said Agreements in order to revise the Project Budget by adding Home Investment Partnerships (HOME) Program funds and additional NSP funds, and increasing the amount of leveraged funds; modifying the designated Harris County-assisted units to a fixed unit designation; and incorporating HOME regulations; and

NOW, THEREFORE, the County and the Subrecipient do mutually agree as follows:

**I.**

**II. SCOPE OF SERVICES, A. Eligible Activities, is hereby amended to read as follows:**

The Subrecipient agrees to provide the activities described in **Exhibit "A,"** attached hereto and incorporated herein for all purposes, in accordance with the provisions of this Agreement and in compliance with the requirements of the Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq. and all regulations issued thereunder. A failure by the Subrecipient to abide by such provisions of this Agreement shall constitute a breach of this Agreement.

## II.

### II. SCOPE OF SERVICES, E. Project Requirements, is hereby amended to read as follows:

#### 2. Fixed and Floating Units and Qualification as Affordable Rental Housing

A *fixed unit* is the specific unit originally designated as an assisted unit. This fixed unit shall remain the same throughout the affordability period. A *floating unit* shall mean the specific unit designated as an assisted unit that may change over time as long as the total number of assisted units remains constant. Subrecipient shall maintain the units identified in **Exhibit "A,"** Scope of Services, as the designated assisted units on a floating basis in order to maintain conformity with Program requirements during the period of affordability so that the total number of housing units remains the same, and each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated assisted unit.

Only eligible very low, low-income families may occupy assisted units. The units must meet the following requirements to qualify as affordable housing:

- a. HOME Rental Housing "Program Funds Rule" – Ninety (90) percent of the total households assisted must have incomes that do not exceed sixty (60) percent of area median income during the first year of occupancy. The remaining households may not have incomes that exceed eighty (80) percent of area median income.
- b. HOME "Project Rule" shall apply to rental projects with five (5) or more assisted units. Subrecipient shall designate at least twenty (20) percent of the assisted units as Low rent units. The assisted units must be occupied by very low-income families (i.e., families with incomes that do not exceed fifty (50) percent of the area median income). These units must bear rents no greater than: (1) thirty (30) percent of the tenant's monthly adjusted income, or (2) thirty (30) percent of the annual gross income of a family whose income equals fifty (50) percent of area median income, adjusted for family size, or (3) in projects receiving federal or state project-based rental assistance and the very low-income family pays no more than thirty (30) percent of the family's adjusted income, then the maximum rent may be the rent allowable under the federal or state project-based rental assistance subsidy program.
- c. HOME High rental units – Maximum rents are the lesser of the Section 8 Fair Market Rents (FMR) minus tenant-paid utilities (or area-wide exception rents for existing housing for comparable units in the area as established by HUD under 24 C.F.R. § 888.111); or for existing housing or thirty (30) percent of the adjusted income of a family whose annual income equals sixty-five (65) percent of the median income for the area as determined by HUD, with adjustments for the number of bedrooms in the



unit.

**d. Over-Income Tenants**

Temporary noncompliance is permissible when the non-compliance is caused by an increase in a tenant's income. When the income of a tenant increases above eighty (80) percent of area median income and the assisted units are designated as fixed, then the next available assisted unit must be rented to a income-eligible tenant. When the assisted units are designated as floating, the next comparable unit that becomes available must be rented to an eligible tenant. When the income of a tenant in an assisted unit increases above eighty (80) percent of area median income as determined by HUD, that tenant is required to pay thirty (30) percent of his or her income for rent except that, in projects where assisted units are floating, the tenant rent may not exceed the market rent for a comparable, unassisted unit in the area. If the income of a tenant in a Low rent unit increases (but does not exceed eighty (80) percent of area median income), then Subrecipient must rent the next available comparable unit to a very low-income tenant. The unit occupied by the tenant whose income increased becomes a High rent unit and the corresponding rent must be charged. Subrecipient must give assisted unit tenants no less than thirty (30) days prior written notice before rent increases are implemented and the rents may not increase until the tenant's lease expires.

**e. Period of Affordability**

Subrecipient must meet the minimum affordability period. For new construction of rental housing, the minimum affordability period is twenty (20) years, beginning after Project completion. Project completion means that all necessary title transfer requirements and construction work have been performed, the Project complies with the property standards under 24 C.F.R. § 570.208(a)(3), and the final drawdown has been disbursed for the Project. The affordability requirements shall apply without regard to the term of any loan or mortgage or transfer of ownership prior to expiration of the affordability period. Affordability restrictions remain in force regardless of transfer of ownership. Program funds provided under this Agreement are subject to recapture by Grantee, should the Subrecipient fail to meet the minimum affordability period.

During the affordability period, Grantee shall conduct on-site inspections annually of all assisted units to ensure continued compliance with 24 C.F.R. § 570.208(a)(3) (See Scope of Services, Exhibit A, Activity #4). Prior to commencement of leasing activities, inspection shall be based on a sufficient sample of units. At a minimum, the Grantee shall inspect twenty (20) percent of the assisted units and a minimum of one unit in each building. The remaining units shall be inspected if compliance problems are identified in the sample units. Grantee shall randomly select units and

shall notify Subrecipient of the date and time of the inspections. Subrecipient shall notify tenants to ensure access to the selected units and shall assign staff to accompany Grantee inspector(s)

In addition to performing a physical inspection of the units, Grantee shall also verify tenant rents and income annually. Subrecipient shall provide adequate workspace for rent and income verification.

**f. Affirmative Marketing; Minority Outreach Program**

Subrecipient must follow the affirmative marketing procedures and requirements for assisted housing containing five (5) or more housing units. The affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. Grantee will annually assess the affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions, as described in Exhibit A, Scope of Services and in Exhibit "I."

**g. Selection of a Property Manager**

Subrecipient shall cause the Subrecipient to execute an agreement with a qualified property management company with proven experience in managing and operating HUD-assisted rental properties and/or low income housing tax credit properties no later than sixty (60) days prior to completion of the construction of the Project; and Subrecipient shall provide Grantee with a copy of the fully executed agreement upon request. Subrecipient shall ensure that the property management agreement requires the property management company to comply with any and all Department of Housing and Urban Development (HUD) and Grantee regulations, requirements, findings and be cooperative during Program and financial monitoring visits and/or investigations performed by Grantee staff, the Harris County Auditor's staff, and/or HUD. Failure by Subrecipient to include such requirements in the property management agreement shall constitute non-compliance and breach of this Agreement.

**III.**

Exhibit A., SCOPE OF SERVICES, is hereby amended to read as follows:

**II. Project Description**

The Subrecipient shall be responsible for implementing the Cypresswood Estates Project during the term of this Agreement. The Subrecipient has decided to acquire the property and develop the Project and thereby increase the number of affordable housing units

available to very low-income seniors of Harris County. The total Project Budget is \$14,251,161 including \$5,574,826 in CDBG-DRP funds, \$4,450,000 in NSP funds, \$1,663,660.85 in HOME funds, and \$2,562,674.15 in HCHA leveraged funds to be used for the development, acquisition, and construction of the Project. The Project is located at 15331 Kuykendahl Road, Houston, Texas 77014, Precinct 4.

#### IV.

Exhibit A., SCOPE OF SERVICES, Activities, is hereby amended to read as follows:

##### **Activity #3 Construction**

The Subrecipient will construct an 88 unit affordable rental housing complex. The total units will be comprised of sixteen (16) 854 sq. foot, nineteen (19) 880 sq. foot one (1) bedroom units, twenty-four (24) 1040 sq. foot, twenty-nine (29) 1088 sq. foot two (2) bedroom units.

Rent on seventy-five (75) of the 88 units will be restricted to households with eighty (80%) percent, sixty percent (60%), fifty percent (50%), and thirty percent (30%) of the Median Family Income (MFI). Subrecipient will designate the assisted units on a fixed basis in accordance with the following chart:

Apartment Size (in square footage)	Number of Units	Rent Limits	Number of Bedrooms
854	7	Low	One
854	9	High	One
880	6	Low	One
880	8	High	One
1040	6	Low	Two
1040	22	High	Two
1088	4	Low	Two
1088	13	High	Two
Total Number	75		

#### V.

Exhibit A., SCOPE OF SERVICES, Activities, is hereby amended to read as follows:

##### **Activity #7 Affordability Period and Rent Schedule**

The Subrecipient must maintain a minimum of seventy-five (75) units of the eight-eight (88) units as fixed assisted units at Cypresswood Estates; at least eight (8) of

the fixed assisted units must be occupied by low-income families earning thirty percent (30%) or less of MFI, at least fifteen (15) of the fixed assisted units must be occupied by low-income families earning fifty percent (50%) or less of MFI, at least forty (40) of the fixed assisted units must be occupied by low-income families earning sixty percent (60%) or less of MFI, and at least twelve (12) of the fixed assisted units must be occupied by very low-income families earning eighty percent (80%) or less of MFI, according to rents published annually by HUD for a period no less than twenty (20) years from the date of Project completion. Subrecipient must utilize either the Allowances for Tenant-Furnished Utilities and Other Services approved annually by the Harris County Housing Authority.

Percentage of Median Family Income (MFI)	No. Of Units Set Aside for 20 Year Affordability Period	Applicable Rent (Rents shall not exceed)
Very low-income families (30% or less) 24 CFR 92.252	8 units	HOME Low Rent **
Very low-income families (50% or less) 24 CFR 92.252	15 units	HOME Low Rent **
Low-income families (60% or less) 24 CFR 92.252	40 units	HOME High Rent**
Low-income families (80% or less) 24 CFR 92.252	12 units	HOME High Rent**
Total Number of Units:	75 units	

**\*\*Timing of compliance; as units become available and all within 12 months after project completion.**

## VI.

Exhibit B, BUDGET, found at page 32 of the Agreement, subsequently amended is replaced entirely. The amended budget is attached, hereto and shall be known as "Exhibit B to the Second Amendment of Agreement."

### **Exhibit B to the Second Amendment of Agreement BUDGET**

Harris County Housing Authority  
Cypresswood Estates Project

#### **Maximum Amount to be Paid Under this Agreement**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed four million and four hundred fifty thousand and no one hundredths dollars (\$4,450,000.00) in NSP Funds, five million five hundred seventy-four thousand eight hundred twenty-six and no one hundredths dollars (\$5,574,826.00) in CDBG-DRP Funds, and

one million six hundred sixty-three thousand six hundred sixty and eighty-five hundredths dollars (\$1,663,660.85) in HOME funds.

	<b>Project Summary Budget</b>				
	<b>NSP</b>	<b>CDBG-DRP</b>	<b>HOME</b>	<b>HCHA Funds</b>	<b>TOTAL</b>
Acquisition- Land	\$745,678.10	\$0.00	\$0.00	\$0.00	\$745,678.10
General Construction Costs	\$2,941,073.20	\$4,435,793.11	\$1,083,024.81	\$1,715,718.51	\$10,175,609.63
Closing and Soft Costs	\$292,628.66	\$592,541.89	\$246,234.95	\$846,955.64	\$1,978,361.14
Developer Fees	\$470,620.04	\$536,191.00	\$334,401.09	\$0.00	\$1,341,212.13
HCPID	\$0.00	\$10,300.00	\$0.00	\$0.00	\$10,300.00
Project Budget Total	\$4,450,000.00	\$5,574,826.00	\$1,663,660.85	\$2,562,674.15	\$14,251,161.00

All other conditions of said original Agreement (as previously amended if this applies) shall remain in full force and effect as originally written.

IN WITNESS WHEREOF, the Parties have executed this Second Amended Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011

ATTEST:

HARRIS COUNTY HOUSING AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

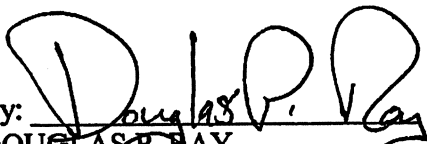
By: \_\_\_\_\_  
GUY RANKIN, IV  
Executive Director


APPROVED AS TO FORM:

HARRIS COUNTY

Vince Ryan

Harris County Attorney

By:   
DOUGLAS P. RAY  
Assistant County Attorney

By:   
DAVID B. TURKEL  
Director, Harris County Community Services  
Department

AUDITOR'S CERTIFICATION

I hereby certify that funds are available in the amount of \$11,688,486.85 (of which \$847,141.00 in NSP funds was previously certified on May 9, 2009 and \$3,152,859.00 in additional NSP funds was certified on August 11, 2009 and \$5,574,826.00 in CDBG-DRP was previously certified on August 11, 2009) to pay the obligation of Harris County under this Agreement.

\_\_\_\_\_  
BARBARA SCHOTT  
County Auditor

IN WITNESS WHEREOF, the Parties have executed this Second Amended Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011

ATTEST:

HARRIS COUNTY HOUSING AUTHORITY

By: David Gunter  
Name: DAVID GUNTER  
Title: CAO

By: Guy Rankin IV  
Name: GUY RANKIN IV  
Title: Executive Director

APPROVED AS TO FORM:

HARRIS COUNTY

Vince Ryan

Harris County Attorney

By: Douglas P. Ray  
Name: DOUGLAS P. RAY  
Title: Assistant County Attorney

By: \_\_\_\_\_  
Name: DAVID B. TURKEL  
Title: Director, Harris County Community Services Department

AUDITOR'S CERTIFICATION

I hereby certify that funds are available in the amount of \$11,688,486.85 (of which \$847,141.00 in NSP funds was previously certified on May 9, 2009 and \$3,152,859.00 in additional NSP funds was certified on August 11, 2009 and \$5,574,826.00 in CDBG-DRP was previously certified on August 11, 2009) to pay the obligation of Harris County under this Agreement.

\_\_\_\_\_  
BARBARA SCHOTT  
County Auditor

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF HARRIS     §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, with the following members present, to-wit:  
**OCT 25 2011**

Ed Emmett	County Judge
El Franco Lee	Commissioner, Precinct No. 1
Jack Morman	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
R. Jack Cagle	Commissioner, Precinct No. 4

and the following members absent, to-wit: NONE, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING A SECOND AMENDMENT TO AN AGREEMENT  
BETWEEN HARRIS COUNTY AND HARRIS COUNTY HOUSING AUTHORITY**

Commissioner Lee introduced an order and made a motion that the same be adopted. Commissioner Morman seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Emmett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Morman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

**RECITALS:**

WHEREAS, HARRIS COUNTY, a body corporate and politic under the laws of Texas, hereinafter referred to as the "Grantee", and Harris County Housing Authority, herein called the "Subrecipient", entered into an Agreement on May 5, 2009 to administer Neighborhood Stabilization Program (NSP) funds for the purpose of granting such funds to the Subrecipient for the acquisition of foreclosed land for the development of an 88-unit apartment complex (the "Project") for very low and low-income senior citizens age 55 or older and maintain ownership of the Project at the completion of construction; and

Presented to Commissioner's Court

**OCT 25 2011**



WHEREAS, on August 11, 2009, Commissioners Court approved an Amendment to said Agreement of May 5, 2009 adding additional NSP funds in the amount of \$3,152,859.00 and additionally approved an Agreement that utilized Community Development Block Grant (CDBG) Program and Disaster Recovery Program (DRP) funds in the amount of \$5,574.826.00 to partially fund costs associated with the acquisition, development and construction of the Project.

WHEREAS, the Grantee and the Subrecipient now desire that the NSP Agreement of May 5, 2009 and subsequent Amendment on August 11, 2009 be made a part of the CDBP-DRP Agreement of August 11, 2009; and

WHEREAS, the Grantee and the Subrecipient now desire to amend said Agreements in order to revise the Project Budget by adding Home Investment Partnerships (HOME) Program funds and additional NSP funds, and increasing the amount of other leveraged funds; modifying the designated Harris County-assisted units to a fixed unit designation; and incorporating HOME regulations; and

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

- Section 1:     The recitals set forth in this order are true and correct.
- Section 2.     The Director of Harris County Community Services Department is authorized to execute a Second Amendment to an Agreement between Harris County and Harris County Housing Authority for Cypresswood Estates. The Second Amendment to the Agreement is attached hereto and made a part hereof for all purposes.
- Section 3.     The Community Services Department and its director or his designee are authorized to take such actions and execute such other documents as they deem necessary or convenient to carry out the purposes of this order.



**Attachment K**

**Multi-family Leasehold Deed of Trust and Letter Loan Agreement**

## LETTER LOAN AGREEMENT

March 8, 2013

CommunityBank of Texas, N.A.  
5999 Delaware  
Beaumont, TX 77706-7607

Ladies and Gentlemen:

The undersigned, **HCHA CYPRESSWOOD ESTATES, LLC**, a Texas limited liability company ("**Borrower**"), has applied for a loan (the "**Loan**") from **COMMUNITYBANK OF TEXAS, N.A.**, a national banking association ("**Lender**") in the amount of \$3,500,000.00. In consideration of the making of the Loan by Lender, Borrower agrees with Lender as follows:

1. **Definitions.** In addition to the defined terms set forth elsewhere herein, the following terms shall have the meanings set forth below:

**"Affiliate" or "affiliate"** shall mean any person or entity controlling, controlled by or under common control with Borrower.

**"Appraisal or appraisal"** shall mean a written statement setting forth an opinion of the Appraisal of the Project that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by Lender or its agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by Lender, in its reasonable judgment.

**"Appraisal Value"** shall mean the restricted, stabilized, as-built value of the Project, as determined by the Lender based on its review of the most current Appraisal.

**"Approved Leases"** shall mean a lease of any portion of the Improvements which satisfies the requirements of Section 6(a).

**"Assignment of Management Agreement"** shall mean an Assignment of Management Agreement dated of even date herewith from Borrower to Lender, and joined in by the management company described therein.

**"Authority Capital Contribution"** shall mean the capital contribution from the Housing Authority, as the sole member of the Borrower, to and in Borrower in the amount of \$9,574,826.00, which was made with the Grant Funds (less any amounts used to buy the Land and to pay certain budgeted soft costs).

**"Business Day"** shall mean a day (other than a Saturday or a Sunday) on which commercial Lenders in Houston, Texas are required to be open for regular commercial Lending business.

**"CDBG Program"** shall mean the Community Development Block Grant Program funded by HUD to address a wide range of unique community development needs improvements, including providing funds to larger cities and urban counties to develop decent housing for low and moderate income families.

**"City"** shall mean the City of Houston, Texas.

**"Closing Date"** shall mean the date of this Letter Loan Agreement.

**"Commitment"** shall mean any written or oral agreement or commitment issued or made by Lender to Borrower before the Closing Date with respect to the terms and manner upon which Borrower will make the Loan, including, without limitation, the letter dated January 8, 2013, from Lender to Borrower.

**"Debt"** shall mean (a) all items of indebtedness or liability (other than the debt of an affiliate, capital, surplus, deferred credits and reserves, as such) which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet as of the date as of which indebtedness is to be determined, (b) indebtedness or other liabilities secured by any mortgage, security agreement, pledge, or lien existing on or encumbering property owned by Borrower, whether or not the indebtedness or other liabilities secured thereby shall have been assumed by Borrower, (c) all liabilities under capitalized leases; (d) all indebtedness of Borrower to Lender under any interest rate swap agreement, interest rate cap agreement and interest rate collar agreement; and (e) all indebtedness of any Person (i) which Borrower has directly or indirectly guaranteed, endorsed (otherwise than for collection or deposit in the ordinary course of business), discounted with recourse, agreed (contingently or otherwise) to purchase or

repurchase or otherwise acquire, (ii) in respect of which Borrower has agreed to supply or advance funds (whether by way of loan, purchase of securities or capital contribution, through a commitment to pay for property or services regardless of the nondelivery of such property or the nonfurnishing of such services or otherwise), or (iii) in respect of which Borrower has otherwise become directly or indirectly liable, contingently or otherwise, whether now existing or hereafter arising.

**"Default"** shall mean the occurrence of any fact or condition which with the lapse of time, notice, or both would become an Event of Default.

**"Event of Default"** shall mean the occurrence of any one of the events set forth in numerical paragraph 8 hereof.

**"Financial Statements"** shall mean such balance sheets, operating statements, profit and loss statements, reconciliations of capital and surplus, changes in financial condition, schedules of sources and uses of funds, and other financial information of Borrower, as shall be required by Lender as a condition to its initial advance under this Letter Loan Agreement.

**"GAAP"** shall mean generally accepted accounting principles established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants and in effect in the United States from time to time, applied on a basis consistent with that of the preceding fiscal year of Borrower, reflecting only such changes in accounting principles or practice with which the independent public accountants of Borrower concur.

**"Governmental Authority"** shall mean any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government (which shall include HUD), including, without limitation, the Housing Authority, Harris County, any state agencies and Persons responsible in whole or in part for environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency.

**"Governmental Permits"** shall mean all certificates, licenses, zoning variances, permits, and no action letters from any

Governmental Authority required to evidence full compliance by Borrower with all Requirements of Law applicable to the Land, and the operation of the Improvements.

**"Grant Funds"** shall mean \$9,574,826.00 funded to the Housing Authority by Harris County as subrecipient of a portion of the grant made to Harris County by HUD under the CDBG Program and the NSP Program. The Housing Authority then contributed such amount (of which \$4,000,000.00 was from proceeds of the CDBG Program and \$5,574,826.00 less the budgeted amount used to purchase the Land and pay certain soft costs, was from proceeds of the NSP Program) from the Grant Funds to Borrower pursuant to the Authority Capital Contribution.

**"Ground Lease"** shall mean the Ground Lease between the Housing Authority, as lessor, and Borrower, as lessee, and covering the Land.

**"Harris County"** shall mean Harris County, a body politic and corporate under the laws of the State of Texas.

**"Housing Authority"** shall mean the Harris County Housing Authority.

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

**"Improvements"** shall mean the 88-unit multi-family seniors affordable housing project located on the Land.

**"Land"** shall mean the located at the 15331 Kuykendahl Road, Houston, Texas 77090, and which is more particularly described in Exhibit "A" to the Mortgage.

**"Lease Stabilization"** shall mean the Project shall have a debt coverage ratio for the most recently completed three-month period preceding the Closing Date (calculated on an annualized basis) of at least 1.25 to 1.0. For purposes hereof, the debt coverage ratio will be calculated in a manner acceptable to Lender, in Lender's sole and reasonable discretion, and will include principal and interest (on the Loan), operating expenses, any and all taxes payable, insurance, and replacement reserves, and will be based upon a thirty (30)-year amortization period and an assumed rate of 4.25% per annum.

**"Leasehold Estate"** shall have the meaning assigned to that term in Section 6(j)(iii) and shall include in any event Borrower's leasehold interest in the Project.

**"Loan Documents"** shall mean this Letter Loan Agreement, the Note, the Mortgage, the Replacement Reserve and Security Agreement, the Operating Reserve and Security Agreement, the Assignment of Management Agreement, and such other agreements, instruments, and documents evidencing, securing, or governing the Loan as shall from time to time be executed and delivered to Lender by Borrower or any other party in accordance with the terms and provisions of this Letter Loan Agreement.

**"Loan to Value Ratio"** shall mean the ratio expressed as a percentage of (a) the maximum commitment of the Lender with respect to the Loan to (b) the Appraisal Value.

**"Material Adverse Change or Effect"** shall mean any act, circumstance, or event (including, without limitation, any announcement of action) which (i) causes an Event of Default, (ii) otherwise would reasonably be expected to be material and adverse to the financial condition or operations of Borrower, or (iii) in any manner would reasonably be expected to materially and adversely affect the validity or enforceability of any Loan Document.

**"Maximum Rate"** shall mean, on any day, the maximum nonusurious rate of interest permitted for that day by whichever of applicable federal or Texas law permits the higher interest rate, stated as a rate per annum. On each day, if any, that the Texas Finance Code, as it may from time to time be amended, establishes the Maximum Rate, the Maximum Rate shall be the "weekly rate ceiling", as determined by reference in Section 303.002, after application of Section 303.009 of the Texas Finance Code, for that day. Provided, however, that to the extent permitted by applicable law, Lender reserves the right to change, from time to time by further notice and disclosure to Borrower, the ceiling on which the Maximum Rate is based under the Finance Code; and, provided further, that the "highest non-usurious rate of interest permitted by applicable law" for purposes of this Letter Loan Agreement shall not be limited to the applicable rate ceiling under the Finance Code if federal laws or other state laws now or hereafter in effect and applicable to this Letter Loan Agreement (and the interest contracted for, charged and collected thereunder) shall permit a higher rate of interest.



**"Mortgage"** shall mean the Multifamily Leasehold Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement, of even date herewith, from Borrower to George A. Casseb, Trustee, covering, among other things, the Land and the Improvements, and all amendments, supplements, restatements, renewals, and extensions thereof.

**"Note"** shall mean the Promissory Note dated of even date herewith, in the face amount of \$3,500,000.00, executed by Borrower, payable to the order of Lender, as the same may be modified, renewed, extended, restated, replaced, substituted, increased, and rearranged from time to time.

**"NSP Program"** shall mean the Neighborhood Stabilization Program funded by HUD as a component of the CDBG Program.

**"Obligations"** shall mean any and all of the covenants and agreements made or undertaken by Borrower to Lender as set forth in the Loan Documents (including, without limitation, all obligations of Borrower to pay and perform under the Note and this Letter Loan Agreement, and all other obligations incurred by the Borrower under any agreement between Borrower and Lender or any affiliate of Lender.

**"Operating Reserve and Security Agreement"** shall mean the Operating Reserve and Security Agreement of even date herewith from Borrower to Lender.

**"Permitted Exceptions"** shall mean all of the Permitted Exceptions under and as defined in the Mortgage, but for purposes of this Agreement, shall include the Ground Lease and the Regulatory Agreement.

**"Person"** shall mean any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

**"Project"** shall mean the Land and the Improvements.

**"Regulations"** shall mean the Amended and Restated Limited Liability Company Regulations of Borrower, approved by the Housing Authority as sole member of Borrower on August 18, 2009.

**"Regulatory Agreement"** shall mean the Regulatory Agreement and Declaration of Covenants and Restrictions placed against the Land by the Housing Authority in order for the Housing Authority to receive the Grant Funds from Harris County.

**"Replacement Reserve and Security Agreement"** shall mean the Replacement Reserve and Security Agreement of even date herewith, from Borrower to Lender, granting to Lender a first lien and security interest in all replacement reserves deposited by Borrower in accordance with this Letter Loan Agreement or otherwise provided for in the Replacement Reserve and Security Agreement.

**"Requirements of Law"** shall mean as to any Person: the certificate or articles of incorporation and by-laws, partnership agreement, regulations, or other organizational or governing documents of such Person; all requirements of the Housing Authority, Harris County, requirements of the Ground Lease, and any other restrictions or covenants affecting the use and development of the Project; all requirements of Chapter 392 of the Texas Local Government Code; all requirements of the resolutions of Harris County Commissioner's Court with respect to the Housing Authority; all rules and regulations of HUD with respect to the CDBG Program and the NSP Program; and any applicable law, treaty, ordinance, order, judgment, rule, decree, regulation, or determination of an arbitrator, court, or other Governmental Authority, including, without limitation, rules, decrees, judgments, regulations, orders, and requirements for permits, licenses, registrations, approvals, or authorizations (and any authoritative interpretation of any of the foregoing); in each case as such now exist or may be hereafter amended and are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject. Requirements of Law shall also include, without limitation, federal regulations and policies issued pursuant to these regulations, including without limitations: (a) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); (b) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614; (c) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973; (d) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended, and 24 CFR Part 570.606; and (e) for existing properties built prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42

U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35.

2. Conditions Precedent. The obligation of Lender under this Letter Loan Agreement to make the Loan is subject to the full, complete, and timely satisfaction of each of the following conditions precedent:

(a) Lender shall have received and approved each of the following, in properly executed form, as necessary:

- (i) the Loan Documents;
- (ii) Lease Stabilization shall have occurred;
- (iii) The fully executed Ground Lease and estoppel certificates from the Housing Authority (as ground lessor) and from Harris County (as fee lienholder), each on a form satisfactory to Lender;
- (iv) (x) a copy of the Regulations (and all modifications and amendments thereto), (y) a copy of the filed Certificate of Formation for Borrower and such other evidence of Borrower's (and its constituent entities, if any) existence and good standing of Borrower as may be required by Lender, and (z) copies of all development agreements, management agreements, investment agreements, deficit funding facility agreements, equity notes, purchase options, and other documents and agreements relating to the governance and organization of Borrower, and all modifications and amendments thereto;
- (v) copies of all instruments and documents evidencing and pertaining to the deferred developer fee which shall have been subordinated to Lender in a manner acceptable to Lender;
- (vi) an origination fee of \$26,250.00;
- (vii) reimbursement for all of Lender's reasonable legal fees and other costs and expenses incurred by Lender in connection with the Loan and the other transactions described herein;

- (viii) a current title commitment to insure the lien granted in the Mortgage (which shall otherwise satisfy the requirements of Exhibit "B"), issued by a company acceptable to Lender, evidencing that there are no liens or other similar encumbrances existing against the Project, other than in favor of the Lender, the Permitted Exceptions and liens to be paid in connection with the closing and as otherwise consented to by Lender, together with the payment of a premium required to issue a loan policy in connection therewith, in the aggregate amount of the Note, and all endorsements thereto as required by Lender;
- (ix) an opinion of counsel to Borrower, which, among other things, provides that the Loan Documents are authorized and duly executed and constitute binding and enforceable obligations of Borrower, subject to any exceptions, limitations and assumptions as may be acceptable to the Lender;
- (x) evidence of the authority of Borrower to enter into the transactions described herein;
- (xi) evidence of all fire, hazard, general and excess liability, flood (if applicable), builder's risk, and workman's compensation insurance required under Exhibit "C", and all other insurance as reasonably required by Lender and required by the other Loan Documents;
- (xii) proof in form and substance satisfactory to Lender that certificates of occupancy have been issued by all requisite Governmental Authorities for all of the Improvements and all necessary Governmental Permits have been issued by all requisite Governmental Authorities for the operation of a seniors development in the Improvements;
- (xiii) a current survey of the Project (which shall indicate what part of the Project is located in the 100-year flood plain based on a current flood map and shall otherwise satisfy the requirements of Exhibit "A" attached hereto);

- (xiv) an Appraisal of the Project, reflecting the market value of the Project (on an as-completed, stabilized basis, and taking into account all rent restrictions to be an amount which provides a Loan to Value Ratio of not more than 80%);
- (xv) a current Phase I Environmental Audit, performed by an independent third party acceptable to Lender;
- (xvi) if and to the extent required by Lender, evidence of utility availability to the Project;
- (xvii) the Financial Statements (as required by Lender);
- (xviii) evidence that there is sufficient parking for the intended use of the Project;
- (xix) evidence that the Land comprises one or more separate tax parcels;
- (xx) the form of lease to be used for leases of units in the Project;
- (xxi) the identity and experience of the management company, together with all management contracts, development agreements, operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Project. If required by Lender, the assignment of such contracts and arrangements provided for in the Mortgage and the other Loan Documents shall be acknowledged by the contracting third parties;
- (xxii) evidence that (a) the Project fully complies with all applicable deed restrictions, laws, regulations, and zoning requirements; and (b) evidence there are no pending proceedings, either administrative, legislative, or judicial, which would in any manner adversely affect that status of zoning with respect to the Project or any part thereof;
- (xxiii) if and to the extent required by Lender, a marketing plan and marketing budget for the Project;
- (xxiv) certificates of a reporting service acceptable to Lender, reflecting the results of a search of the central and local

Uniform Commercial Code records made not earlier than thirty (30) days prior to the date hereof, showing no filings against Borrower or any of the collateral for the Loan except those, if any, approved by Lender or to be paid on the Closing Date; and

(xxv) the Mortgage, all financing statements, and all other documents and agreements required by Lender shall have been recorded or filed in the manner required by Lender.

(b) No Material Adverse Effect shall have occurred since the date of the Financial Statements that has not been disclosed to Lender in writing prior to the date of this Letter Loan Agreement;

(c) The representations and warranties set forth in numerical paragraph 5 of this Letter Loan Agreement shall be true and correct in all material respects;

(d) No Default or Event of Default shall have occurred and be continuing.

3. Commitment. (a) Subject to the terms and conditions of this Letter Loan Agreement and relying upon the representations and warranties hereinafter set forth, Lender agrees to make a single advance term loan to Borrower in the amount of \$3,500,000.00, which loan shall be evidenced by the issuance, execution, and delivery of Note.

(b) The maturity date of the Note may be extended, on a one time basis, for five (5) years from March 8, 2018, provided that each of the following conditions have been fully, completely, and timely satisfied on or before March 8, 2018:

- (1) At least 90 days prior to March 8, 2018, Borrower shall have notified Bank in writing that it requests an extension of the maturity from March 8, 2018, for five calendar years to March 8, 2023;
- (2) At least ninety percent (90%) of the rental units in the Project shall be occupied pursuant to Approved Leases at pro forma rents;
- (3) Borrower shall have delivered, at its sole cost and expense, all extension and other agreements, instruments, amendments, title insurance endorsements,

and modifications required by Bank in its reasonable discretion to effect such renewal and extension (which extension agreement will provide for, among other things, that interest will increase to a fixed rate of 6.75% per annum, and that equal installments of principal and interest on the Note will be payable during the renewal term based on the increased interest rate during the remaining 25 years of the original 30 year amortization which commenced on the Closing Date);

- (4) Borrower shall have received an extension fee equal to .25% of the committed amount of the Loan, and have been reimbursed Bank for all of its costs and expenses (including attorneys fees) relating to the extension;
- (5) No Material Adverse Change shall have occurred; and
- (6) No Default or Event of Default shall be then existing.

4. Purpose. The proceeds of the Loan evidenced by the Note shall be used by Borrower to refinance and replace certain of the financing of the Project.

5. Representations and Warranties. Borrower represents and warrants to Lender (which representations and warranties are made in addition to the warranties and representations made in the other Loan Documents and will survive the delivery of the Note) that:

(a) Borrower is duly organized and validly existing under the laws of the State of Texas, and has full power and authority to consummate the transactions contemplated in this Letter Loan Agreement. Borrower has the power to own its properties and carry on its business as it is now being conducted, and is duly authorized to do business and is in good standing in every jurisdiction where qualification is necessary. Borrower is duly authorized and empowered to create, issue, execute, and deliver the Loan Documents, and all action on its part requisite for the due creation, issuance, and delivery of the Loan Documents has been duly and effectively taken. The Loan Documents do not violate any provision of Borrower's organizational documents. The Loan Documents do not violate any contract, agreement, law or regulation to which Borrower is subject, and do not require the consent or approval of any Governmental Authority;

(b) Except as previously disclosed by Borrower to Lender in writing, Borrower is not in default in the performance, observance, or fulfillment of any of the material obligations, covenants, or conditions contained in any

material agreement or instrument or other Requirement of Law to which it is a party, or in default under or in violation of any law, order, regulation or demand of any Governmental Authority, which default or violation might have consequences which would materially and adversely affect the business or properties of Borrower;

(c) To Borrower's knowledge, Borrower's use of the Project is in full compliance with the requirements of the CDBG Program, the NSP Program, the Regulatory Agreement, and otherwise satisfying the requirements of the Housing Authority and/or Harris County, and otherwise satisfying applicable requirements for completing and operating the Improvements of all Governmental Authorities. All Governmental Permits and other approvals necessary to operate the Project as an affordable seniors development have been or will be obtained by Borrower. To the knowledge of Borrower, the Project has not been used in violation of any federal laws, rules or ordinances for environmental protection, regulations of the Environmental Protection Agency and, any applicable local or state law, rule, regulation or rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials. Further, Borrower has marketed units in the Project in accordance with requirements of the CDBG Program, the NSP Program, the Regulatory Agreement, and the Ground Lease.

(d) No default, or event which with notice, the passage of time, or both, would constitute a default, has occurred with respect to the funding of the Authority Capital Contribution or any instrument or agreement issued in connection therewith;

(e) The Ground Lease is in full force and effect and Borrower is not, and to its knowledge, no other Person is in default of its obligations thereunder;

(f) There are no leases of the Project in effect, other than the Ground Lease, the Approved Leases and leases for laundry facilities and cable television;

(g) As of the date of this Letter Loan Agreement, the Financial Statements delivered to Lender are complete and correct in all material respects, and fairly present in all material respects the financial condition and results of the operations of Borrower as of the date and for the period stated, subject to year-end adjustments as applicable. Borrower had no material assets or liabilities as of the date of the Financial Statements which were not reported on such Financial Statements. No Material Adverse Effect



has occurred since the date of such Financial Statements that has not been disclosed to Lender in writing prior to the date of this Letter Loan Agreement;

(h) Borrower has not made investments in, advances to, or guaranties of the obligations of any person, except as disclosed by the Financial Statements (to the extent disclosure of such investments in the Financial Statements would be appropriate under GAAP);

(i) Except for liabilities as previously disclosed to Lender in the Financial Statements and in the Loan Documents, has no liabilities, direct or contingent. Except as disclosed to Lender, there is no litigation, administrative proceeding, investigation, or other action of any nature pending or, to the knowledge of Borrower, threatened against Borrower before any court or administrative agency which involves the reasonable possibility of any judgment or liability which could reasonably be expected to have a Material Adverse Effect. No unusual or unduly burdensome restriction, restraint or hazard exists by contract, law, governmental regulation or otherwise relative to the business or assets of Borrower;

(j) Borrower has filed all tax returns required to be filed and has paid all taxes shown thereon to be due, including interest and penalties, or due pursuant to any assessment received by Borrower, except such taxes, if any, under contest in good faith and for which adequate reserves have been provided;

(k) Neither Borrower nor any agent acting on its behalf has taken or will take any action which might cause this Letter Loan Agreement or the Note to violate Regulation U or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Exchange Act of 1934, in each case as now in effect or as the same may hereafter be in effect on the date of any advance under or in connection with the Note;

(l) The principal place of business and the place where Borrower keeps its books and records is located at the address of Borrower set forth in numerical paragraph 13 of this Letter Loan Agreement;

(m) Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any development rights, mineral rights, air rights or other similar rights, privileges or attributes with respect to the Project, including those arising under any now or

hereafter existing zoning or land use ordinance or other law or governmental requirement;

(n) Borrower has good and indefeasible title to the leasehold interest in the Project, and the leasehold interest in the Project is free and clear of liens, except those granted to Lender, the Permitted Exceptions, and those contemplated by the Loan Documents, and liens disclosed to Lender in writing prior to the date of this Agreement or approved by Lender (in writing) after the date of this Agreement; and

(o) Borrower has reviewed and understands the terms and provisions of this Letter Loan Agreement and each of the Loan Documents and has had the opportunity to discuss the terms, consequences, and implications of its execution and delivery of this Letter Loan Agreement and the other Loan Documents with its counsel and other persons and representatives deemed necessary.

6. Covenants of Borrower. In addition to the covenants and agreements of Borrower made elsewhere in this Letter Loan Agreement, Borrower covenants and agrees, unless Lender shall otherwise consent in writing, that Borrower shall:

(a) Lease tenant space in the Improvements (as a sublease under the Ground Lease) only pursuant to Approved Leases. An "Approved Lease" is (i) a tenant lease of space in the Improvements that is substantially on the standard form submitted to Lender prior to the Closing Date and which has been approved by Lender, and (ii) which is on terms and to a tenant who satisfies the requirements of the CDBG Program, the NSP Program, HUD, the Housing Authority, Harris County, and the Regulatory Agreement, and all other applicable Requirements of Law. Borrower shall not, without the consent and approval of Lender, make any change to its standard form of lease other than in the ordinary course of business or as mandated by applicable Requirements of Law.

(b) Do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights, and franchises; and at all times maintain, preserve and protect its assets used or useful in the conduct of its business, keep the same in good repair, working order and condition, and make, or cause to be made, all needful or proper repairs, replacements and improvements thereto so that Borrower's business may be properly and advantageously conducted at all times (except where the failure to do any of the foregoing would not result in a Material Adverse Effect);

(c) (i) Comply in all material respects with all applicable statutes, government regulations, and other Requirements of Law; (ii) remain licensed with all applicable state and federal regulatory and other agencies; (iii) pay and discharge all taxes, assessments and governmental charges or levies imposed on it, the collateral described in the Mortgage, or any part thereof, its income and profits, and the Land, or any part thereof, before the same shall be in default; and (iv) pay all lawful claims for labor, materials, supplies, or other claims, which, if unpaid, would become a valid lien or charge upon the Land and the or any part thereof in excess of \$25,000.00 in any single instance (unless such claim is being actively contested by Borrower and appropriate reserves have been made therefor);

(d) Maintain adequate insurance on the Project as required in Exhibit "C" and as otherwise reasonably required by Lender;

(e) Promptly furnish to Lender such information regarding the financial condition, assets, liabilities, and operations of Borrower, as Lender may reasonably request, and, without limiting the foregoing, provide all items required by Section 14(b) of the Mortgage;

(f) Promptly cure any defects in the execution and delivery of the Loan Documents and immediately execute and deliver to Lender all such other and further instruments as may be reasonably required by Lender from time to time in order to satisfy or comply with the covenants and agreements of Borrower made in this Letter Loan Agreement;

(g) Permit Lender, or any of its duly authorized representatives and/or agents, from time to time during Borrower's business hours, but with at least 72 hours prior notice, and at Borrower's sole cost and expense, to enter the Land for the purpose of examining the Land or the books and records of Borrower and making copies of any such books and records; provided that, in the course of any such examination, Lender or its representatives and agent shall not materially interfere with Borrower's normal and customary business operations. Notwithstanding the foregoing, during the existence of an Event of Default, Lender may enter upon the Project of Borrower, for the purposes expressed above, without limitation, and at Borrower's sole cost and expense. Subject to the applicable notice requirements set forth in the Loan Documents, nothing shall limit the ability of Lender or its representative to inspect any of the Land and the Improvements to confirm construction is progressing as set forth in the construction schedule provided to Lender as part of the Required Due Diligence;

(h) Unless otherwise consented to by Lender in writing, maintain Lender as its principal depository for project accounts related to the Project;

(i) Operate the Project in a good and workmanlike manner and in accordance with all applicable Requirements of Law and will pay all fees or charges in connection therewith. In particular, the Project will be operated in a manner which ensures compliance with the CDBG Program, the NSP Program, and the Regulatory Agreement. The Project will be operated in a manner consistent with the requirements of the Housing Authority Harris County, HUD, the CDBG Program, and the NSP Program;

(j) With respect to the Ground Lease:

(i) Borrower agrees to perform and fully comply with all agreements, covenants, terms, and conditions imposed on or assumed by Borrower as lessee under the Ground Lease; and if Borrower fails to do so, Lender may, but shall not be obligated to, take any action Lender deems necessary or desirable to prevent or to cure any default by Borrower in the performance of or compliance with any of Borrower's covenants or obligations under the Ground Lease. On receipt by Lender from the lessor under the Ground Lease of notice of any default by Borrower thereunder pursuant to the terms of the Ground Lease or otherwise, Lender may rely thereon and, upon notice to Borrower, take any action as aforesaid to cure such default even though the existence of such default or the nature thereof is questioned or denied by Borrower or by any party on behalf of Borrower. Borrower hereby expressly grants to Lender, and agrees that Lender shall have, the absolute and immediate right to enter in and on the Project to such extent and as often as Lender, in its sole and reasonable discretion, deems necessary or desirable in order to prevent or to cure any such default by Borrower. Lender may pay such sums of money as Lender in its sole and reasonable discretion deems necessary for any such purpose, and Borrower hereby agrees to pay to Lender, within 5 days of demand, all such sums so paid and expended by Lender, together with interest thereon from the date of each such payment at the Maximum Rate. If Lender takes any action necessary to cure any default by Borrower, Lender shall be subrogated to any and all of the rights of the Person or Persons to whom any payment is made by Lender and all of the rights of Borrower under the terms and provisions of the Ground Lease.

(ii) Borrower agrees to deliver to Lender copies of all notices of default or foreclosure received by Borrower from the lessor under the Ground Lease.

(iii) Borrower shall not surrender the leasehold estate created by the Ground Lease (the "Leasehold Estate") or terminate or cancel the Ground Lease. Without the express written consent of Lender, which shall not be unreasonably withheld, Borrower will not modify, change, supplement, alter or amend in any material respect the Ground Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior written consent thereto by Lender shall be void and of no force and effect.

(iv) No release or forbearance of Borrower's obligations under the Ground Lease, pursuant to the provisions of the Ground Lease or otherwise, shall release Borrower from any of its obligations hereunder, including, without limitation, its obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of all the terms, provisions, covenants, conditions, and agreements contained in the Ground Lease to be kept, performed and complied with by the Ground Lease therein.

(v) Unless Lender shall otherwise expressly consent in writing, the fee title to the Land and the Leasehold Estate shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in the lessor under the Ground Lease or in the Borrower, or any third party by purchase or otherwise.

(vi) Borrower expressly acknowledges that all of the provisions of the assignment of leases set forth in the Construction Mortgage are applicable with respect to any subleases or subtenants now occupying or who may hereafter occupy all or part of the Project.

(vii) A default of any kind whatsoever in the payment or performance of any of the duties or obligations imposed upon the Borrower by the terms, covenants, agreements or provisions of the Ground Lease, which is not cured within any applicable grace or cure period, shall be and constitute an Event of Default hereunder.

(k) Make monthly deposits to escrows established with Lender for real estate taxes, if any, special assessments, and insurance premiums, if and to the extent as provided for in the Mortgage. Lender shall determine the amount of these monthly deposits (which, in the case of the escrows for real estate taxes, special assessments and insurance, shall be in amounts sufficient to accumulate the full amount of anticipated billings, one month before their due dates), and may, at its discretion, adjust those amounts from time to time, as it deems appropriate;

(l) Establish and fund a replacement reserve account by making monthly deposits as required by the Replacement Reserve and Security Agreement. The replacement reserve will initially be \$250.00 per unit per year and may be used to fund specified replacements and capital improvements (except Lender may deduct from the reserve an annual administrative fee of \$150.00);

(m) Establish and fund an operating reserve in the manner provided for in the Operating Reserve and Security Agreement;

(n) Reimburse Lender within five (5) days of request for all reasonable amounts expended, advanced, or incurred by Lender (i) to satisfy any obligation of Borrower under this Letter Loan Agreement following an Event of Default, (ii) to collect a Note, or any other amounts advanced under this Letter Loan Agreement or otherwise, or (iii) to enforce the rights of Lender under the Loan Documents, which amounts will include, without limitation, all court costs, reasonable attorneys' fees, and reasonable fees of auditors, accountants, and investigators incurred by Lender in connection with any such matters, together with interest at the Default Rate (as defined in the Note) on each such amount from the date of notification to Borrower that the same was expended, advanced or incurred by Lender until the date it is repaid to Lender; and

(o) Promptly after the occurrence thereof, give notice in writing to Lender of the occurrence of any event which constitutes a Default or Event of Default or an event which constitutes a Material Adverse Effect.

7. Negative Covenants of Borrower. Borrower covenants and agrees, unless Lender shall otherwise consent in writing, until final payment in full of the Note, that Borrower will not, either directly or indirectly:

(a) Sell, lease, assign, or otherwise dispose of or transfer any assets, except for Approved Leases and leases otherwise permitted under Section 6(a), or if done in the normal course of its business or as otherwise permitted by the Loan Documents.

(b) Incur, create, assume, or permit to exist any Debt, except:

(i) the Obligations;

(ii) all existing loans and borrowings by Borrower as reflected in the Financial Statements; and all renewals, extensions, modifications and rearrangements thereof;

- (iii) liabilities, direct or contingent, of Borrower to the extent that such liabilities existed on the date of this Agreement and continue to exist and are reflected in the Financial Statements or have been disclosed to Lender in writing and approved by Lender prior to the date of this Agreement;
  - (iv) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;
  - (v) obligations from time to time incurred in the ordinary course of business, other than for borrowed money;
  - (vi) taxes, assessments, or other government charges which are not yet past due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted if a reserve shall have been made therefor as required by GAAP; and
  - (vii) Debt to be paid in connection with the closing of the Loan.
- (c) Make or permit to remain outstanding any loans or advances to or investments in any Person, except that the foregoing restrictions shall not apply to the following:
- (i) loans, advances, or investments the material details of which have been set forth in the Financial Statements, or which have been otherwise disclosed to and approved by Lender in writing prior to the date of this Agreement;
  - (ii) certificates of deposit or interest bearing accounts of Lenders or savings and loan associations insured by an agency of the United States; and
  - (iii) securities issued and/or guaranteed by the United States of America, the State of Texas, any other state of the United States, or any agency, unit, instrumentality or subdivision thereof.
- (d) Create, incur, assume, or permit to exist any mortgage, pledge, security interest, lien, or similar encumbrance on any of Borrower's assets, including, without limitation, any of the Borrower's interest in the leasehold interest in the Project (to the extent owned by Borrower), except as

specifically disclosed in the Financial Statements, (ii) acquire or agree to acquire assets under any conditional sale agreement or title retention contract, or (iii) sell and leaseback any assets, except that the foregoing restrictions shall not apply to:

- (1) liens for taxes, assessments and other governmental charges not yet due unless any such taxes, assessments and other governmental charges are being contested and have been adequately bonded;
- (2) liens of vendors, carriers, warehousemen, landlords, mechanics, laborers, and materialmen arising by law in the ordinary course of business for sums not yet due or being contested in good faith if reserve shall have been made therefor as required by GAAP;
- (3) pledges or deposits in connection with or to secure worker's compensation, unemployment insurance, pensions or other employee benefits;
- (4) mortgages, pledges, security interests, liens, encumbrances, landlord's liens, or title retention contracts existing as of the date of this Agreement and disclosed to Lender in writing and approved by Lender before the date hereof;
- (5) liens and/or security interests required by this Agreement and the other Loan Documents; and
- (6) any of the Permitted Exceptions.

(e) Permit any Person (other than tenants under Approved Leases) to obtain any right to its utility services, including, without limitation, water and sewer taps, nor shall Borrower permit to expire any of its rights to utility services or commitments for capacity, including, without limitation, water and sewer taps.

(f) Except as otherwise provided or permitted in the Loan Documents, assign, transfer, or encumber its rights or Obligations under any Loan Document or any proceeds of the Loan.

(g) Except as expressly permitted by the terms of the Mortgage, dissolve or liquidate or merge with or be consolidated into any other entity or modify or amend its organizational documents in any material respect.



(h) Change the management company managing the operation of the Project or materially change any material term or provision of any management agreement relating to the Project. Borrower shall not enter into any service contract in connection with the Project (other than for the provision of cable television, telephone, internet, security and coin operated laundry services) which is not terminable by Borrower (or its successors) without cause, or with not more than thirty (30) days notice.

(i) Permit any change in the management of Borrower, except that to the extent that it occurs as a result of or in accordance with the terms of the Regulations and the change has been approved by Lender (which approval will not be unreasonably withheld, delayed, or conditioned), or in accordance with the express terms of the Loan Documents.

(j) Permit its basic business operations, as contemplated on the Closing Date to materially change or cease.

(k) (a) Be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by Lender at any time to enable Lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

(l) Make any distributions or advances to its members during the continuance of an Event of Default.

(m) **Loan to Value.** Borrower shall not permit the Loan to Value Ratio to exceed eighty percent (80%).

8. **Events of Default.** Each of the following shall constitute an "**Event of Default**" under this Letter Loan Agreement:

(a) Any covenant in this Letter Loan Agreement is not fully and timely performed within thirty (30) days after written notice thereof is provided by Lender to Borrower; provided, however, Lender shall not be required to provide such notice and opportunity to cure, with respect to any of the other Events of Default described in any other subparagraph in this numerical paragraph 8, the occurrence of any such event shall in and of itself constitute an Event of Default;

(b) Any statement, representation, or warranty in the Loan Documents, any Financial Statements, or any other writing made or delivered to Lender by or on behalf of Borrower in connection with the Loan is false, misleading, or erroneous in any material respect;

(c) The termination, cancellation, or expiration of the Ground Lease, or Borrower's default in the performance of its obligations under the Ground Lease which is not fully cured within any applicable grace or cure period;

(d) Borrower shall:

- (i) voluntarily be adjudicated a bankrupt or insolvent; or
- (ii) seek, consent to, or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; or
- (iii) file a petition seeking relief under the bankruptcy arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction; or
- (iv) make a general assignment for the benefit of creditors; or
- (v) admit in writing its inability to pay its debts as they mature; or
- (vi) fail to have discharged within a period of sixty (60) days any attachment, sequestration, or similar writ levied upon any of its property involving a claim in excess of \$100,000.00; or
- (vii) fail to pay or appeal within 30 days any final money judgment against it in excess of \$100,000.00;

(e) If (i) a petition is filed against Borrower seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or other competent jurisdiction, or (ii) a court of competent jurisdiction enters an order, judgment, or decree appointing, without the consent of Borrower, a receiver or trustee for Borrower, or for all or any substantial part of its property and such petition, order, judgment, or decree shall not be and remain discharged or stayed within a period of sixty (60) days after its entry;

(f) The occurrence of any Material Adverse Effect; and/or

(g) The liens and/or security interests granted in any Loan Document shall not constitute a first and prior lien and/or security interest upon the collateral described therein, subject only to the Permitted Exceptions or otherwise permitted by the Loan Documents, and such circumstances are not fully cured in a manner reasonably acceptable to Lender within 30 days after written notice thereof is provided by Lender to Borrower

9. The Rights and Remedies of Lender.

(a) Upon the occurrence and continuance of any Event of Default, Lender, at its option and without any notice of intent to accelerate, notice of acceleration, or other notice or demand, may declare the entire principal amount of the Note then outstanding and the interest accrued thereon immediately due and payable, and the said entire principal, interest, and all other amounts owing thereunder shall thereupon become immediately due and payable without further presentment, further demand, protest, notice of protest, or other notice of default or dishonor of any kind, all of which are hereby expressly waived by Borrower.

(b) Upon the occurrence and continuance of any Event of Default, Lender shall have, in addition to the rights and remedies given it in the Loan Documents, all of the rights and remedies allowed by applicable ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any governmental or political subdivision or agency thereof, or any court or similar entity established by any such subdivision or agency.

(c) Upon the occurrence and continuance of any Default, any obligation of Lender under this Letter Loan Agreement shall immediately and automatically cease and terminate unless and until Lender shall reinstate the same in writing.

10. Lender Offset. As further security for the Note, the Obligations, and all other indebtedness which may at any time be owing by Borrower to the holder of the Note, whether such obligations and indebtedness are incurred directly or acquired from third parties by Lender or any other holder of the Note, Borrower grants to Lender or any other holder of the Note a lien, security interest, and contractual right of setoff in and to all deposits (general or special, time or demand) of Borrower now or at any time hereafter held or received by or in transit to or coming within the custody or control of Lender or any other holder of the Note, including without limitation, all certificates of deposit and other accounts,

irrespective of whether such certificates or accounts have matured and whether the exercise of such right of setoff results in loss of interest or other penalty under the terms of the certificate or agreement. Lender or any holder hereof shall have a first lien and security interest on all deposits and other sums at any time credited by or due from Lender or any holder of the Note to Borrower as collateral security for the payment of the Note, and Lender or other holder hereof, at its option and after acceleration of the maturity of the Note, howsoever said maturity may be brought about, may without notice and without any liability, hold all or any part of any such deposits or other sums until all sums owing on the Note and all other indebtedness owing by Borrower to the holder of the Note have been paid in full and all other obligations have been performed in full and/or apply or set off all or any part of any such deposits or other sums credited by or due from Lender or any holder of the Note to or against any sums due on the Note in any manner and in any order or preference which Lender or other holder hereof, at its sole discretion, chooses. The foregoing rights of Lender are in addition to and cumulative of all other rights and remedies (including, without limitation, the liens, security interests and rights of setoff) which Lender may have.

**11. LENDER NOT IN CONTROL. LENDER'S RIGHTS AND REMEDIES PROVIDED FOR IN THIS LETTER LOAN AGREEMENT AND IN THE OTHER LOAN DOCUMENTS ARE INTENDED TO PROVIDE LENDER WITH A RIGHT TO OVERSEE BORROWER'S ACTIVITIES AS THEY RELATE TO THE LOAN TRANSACTIONS PROVIDED FOR IN THIS LETTER LOAN AGREEMENT, WHICH RIGHT IS BASED ON LENDER'S VESTED INTEREST IN BORROWER'S ABILITY TO PAY THE NOTE AND PERFORM THE OTHER OBLIGATIONS. NONE OF THE COVENANTS OR OTHER PROVISIONS CONTAINED IN THIS LETTER LOAN AGREEMENT SHALL, OR SHALL BE DEEMED TO, GIVE LENDER THE RIGHT OR POWER TO EXERCISE CONTROL OVER, OR OTHERWISE IMPAIR, THE DAY-TO-DAY AFFAIRS, OPERATIONS, AND MANAGEMENT OF BORROWER.**

**12. Representations and Warranties. All representations and warranties of Borrower herein, and all covenants and agreements made by Borrower herein shall survive the effective date of this Letter Loan Agreement, except as otherwise provided herein or as waived in writing by Lender.**

**13. Notice. All notices, demands, requests, and communications permitted or required under this Letter Loan Agreement shall be in writing, may be personally served or sent by express/overnight mail service,, telecopier (confirmed by telephone), U.S. certified mail (return receipt requested), or any express/overnight mail service, and shall be effective upon receipt, such receipt being deemed to occur three (3) business after its deposit in the U.S. mail, postage prepaid or the first Business Day after its transmission by telecopier or**

express/overnight mail service, as the case may be, addressed to each of the following at the addresses indicated below:

If to Borrower:

HCHA CYPRESSWOOD ESTATES, LLC  
8933 Interchange Drive  
Houston, Texas 77054  
Attn: CEO, Harris County Housing Authority

If to Lender:

CommunityBank of Texas, N.A.  
5999 Delaware  
Beaumont, Texas 77706-7607

Any party may, by proper written notice to the other party, change the individuals or addresses to which such notices shall thereafter be sent.

14. Other Fees. Borrower acknowledges that Lender may charge a fee in connection with its processing of any request by Borrower for an advance in violation of this Letter Loan Agreement or a request by Borrower to modify, amend, or waive any term or provision of this Letter Loan Agreement or any other Loan Document, or to waive any Default or Event of Default. Nothing herein shall constitute an agreement or commitment by Lender to agree to any such request.

15. Binding Effect. All covenants and agreements of Borrower under this Letter Loan Agreement shall bind the successors and assigns of Borrower and shall inure to the benefit of Lender and its successors and assigns. The rights of Borrower under this Letter Loan Agreement are not assignable.

16. Renewal of Indebtedness. All provisions of this Letter Loan Agreement relating to the Note shall apply with equal force and effect to each and all promissory notes hereafter executed which in whole or in part represent a renewal, extension or rearrangement of any part of the indebtedness originally represented by a Note provided that nothing herein shall constitute a commitment or offer by Lender to such a renewal, extension or rearrangement.

17. Payments. All payments made by Borrower on any Note shall be made to Lender at its address set forth in that Note (or otherwise designated by Lender) in federal or other immediately available funds before 2:00 p.m., Houston time, on the date such payment is required to be made. Any payment received and accepted by Lender after such time shall be considered for all purposes

(including the calculation of interest, to the extent permitted by law) as having been made on the next following Business Day.

18. No Waiver. No course of dealing on the part of Lender, its officers or employees, nor any failure or delay by Lender with respect to exercising any of its rights, remedies, powers or privileges under the Loan Documents shall operate as a waiver thereof. No indulgence by Lender, or waiver of compliance with any of the terms, covenants or provisions of the Loan Documents, shall be construed as a waiver of Lender's right to subsequently require strict performance by Borrower of the Loan Documents. The rights and remedies of Lender under the Loan Documents shall be cumulative and the exercise or partial exercise of any such rights or remedies shall not preclude the exercise of any other rights or remedies.

19. GOVERNING LAW. EXCEPT AS SPECIFICALLY PROVIDED FOR IN ANY OTHER LOAN DOCUMENT, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE UNITED STATES FEDERAL LAW. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS, THE UNDERSIGNED HEREBY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN EAGLE PASS, TEXAS SHALL HAVE EXCLUSIVE JURISDICTION AND VENUE WITH RESPECT TO ALL ACTIONS BROUGHT BY OR AGAINST ANY PARTY UNDER OR PURSUANT TO THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS, AND THE UNDERSIGNED HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND TO SERVICE OF PROCESS, EFFECTIVE UPON RECEIPT BY PERSONAL SERVICE, OVERNIGHT EXPRESS DELIVERY OR REGISTERED OR CERTIFIED MAIL. TO THE EXTENT OF ANY INCONSISTENCY BETWEEN THIS SECTION AND A LIKE PROVISION IN ANY OTHER LOAN DOCUMENTS, THIS SECTION SHALL GOVERN AND CONTROL.

20. Amendment. Neither this Letter Loan Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

21. Severability. In the event any provision contained in any of the Loan Documents shall, for any reason, be held invalid, illegal or unenforceable in any respect, such provision shall be severed from the applicable Loan Document, and such invalidity, illegality or unenforceability shall not affect any other provision of the applicable Loan Document.

22. Lender's Discretion. All matters hereunder that require Lender's discretion, (including, without limitation, whether Borrower has satisfied any

condition precedent), Lender shall use its sole and reasonable discretion. Further, Lender may in its sole discretion waive any of its rights with respect to a particular Event of Default. All documents, agreements, instruments, certificates, statements, and other items delivered to Lender pursuant to this Letter Loan Agreement and the other Loan Documents shall be in form and substance satisfactory to Lender in its sole and reasonable discretion except as otherwise expressly prescribed.

23. Commitment Rendered. The obligations of Lender, if any, under the Commitment, as may have been extended, are fully and completely satisfied, replaced, and superseded by the execution and delivery of the Loan Documents.

24. Entire Letter Loan Agreement. This Letter Loan Agreement and the documents referred to herein embody the entire agreement with respect to the respective rights, obligations, and liabilities of the parties and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. This Letter Loan Agreement may be amended only by an instrument in writing executed by the party to be bound thereby, and may be supplemented only by documents delivered in accordance with the express terms hereof. **THIS LETTER LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.**

25. Captions. The captions, headings, and arrangements used in this Letter Loan Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

26. Counterparts. This Letter Loan Agreement may be executed in two or more counterparts, and it shall not be necessary that any one counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

27. Controlling Agreement. Borrower and Lender intend to conform strictly to the applicable usury laws. All agreements between Lender and Borrower (or any other party liable with respect to any indebtedness under this Letter Loan Agreement and the other Loan Documents) are hereby limited by the provisions of this section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest contracted for, charged, or received under the Note or otherwise exceed the

Maximum Rate. If, from any possible construction of any document, interest would otherwise be payable to Lender in excess of the Maximum Rate, any such construction shall be subject to the provisions of this section and such document shall be automatically reformed and the interest payable to Lender shall be automatically reduced to the Maximum Rate, without the necessity of execution of any amendment or new document. If Lender shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Rate, an amount equal to the amount which would have been excessive interest shall at the option of Lender, be refunded to Borrower or applied to the reduction of the principal amount owing hereunder in the inverse order of its maturity and not to the payment of interest. The right to accelerate maturity of the Note or any other indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Rate.

**28. BUSINESS LOANS. BORROWER WARRANTS AND REPRESENTS TO LENDER, AND TO ALL OTHER HOLDERS OF ANY DEBT EVIDENCED BY THE NOTE, THAT THE LOAN IS AND SHALL BE FOR BUSINESS, COMMERCIAL, INVESTMENT OR OTHER SIMILAR PURPOSE AND NOT PRIMARILY FOR PERSONAL, FAMILY, HOUSEHOLD OR AGRICULTURAL USE, AS SUCH TERMS ARE USED IN CHAPTER ONE OF THE TEXAS CREDIT CODE.**

**29. JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

**30. No Offset. All payments due by Borrower to Lender under the Loan Documents are to be made by the Borrower without offset or other reduction.**



31. Increased Costs. If after the Closing Date any law, regulation or change in any law or regulation or in the interpretation thereof, or any ruling, decree, judgment, guideline, directive or recommendation (whether or not having the force of law) by any regulatory body, court, central Lender or any administrative or Governmental Authority charged or claiming to be charged with the administration thereof (including, without limitation, a request or requirement which affects the manner in which the Lender allocates capital resources to its commitments including its obligations hereunder) shall either (a) impose upon, modify, require, make or deem applicable to the Lender or any of its affiliates, subsidiaries or participants any reserve requirement, special deposit requirement, insurance assessment or similar requirement against or affecting the Loan, or (b) subject the Lender or any of its affiliates, subsidiaries or participants to any tax, charge, fee, deduction or withholding of any kind whatsoever in connection with the Loan or change the basis of taxation of the Lender or any of its affiliates, subsidiaries or participants (other than a change in the tax payable by the Lender or any of its affiliates, subsidiaries or participants based on the overall net income of the Lender or such other Person), or (c) impose any condition upon or cause in any manner the addition of any supplement to or increase of any kind to the Lender's or an affiliate's, subsidiary's or participant's capital or cost base for issuing or owning a participation in the Loan which results in an increase in the capital requirement supporting the Loan, or (d) impose upon, modify, require, make or deem applicable to the Lender or any of its affiliates, subsidiaries or participants any capital requirement, increased capital requirement or similar requirement, such as the deeming of the Loan to be an asset held by the Lender or any of its affiliates, subsidiaries or participants for capital adequacy calculation or other purposes (including, without limitation, a request or requirement which affects the manner in which the Lender or any participant allocates capital resources to its commitments including its obligations hereunder or under the Loan), and the result of any events referred to in (a), (b), (c) or (d) above shall be to increase the costs in any way to the Lender or affiliate, subsidiary or any participant of issuing, maintaining or participating in the Loan or reduce the amounts payable by Borrower hereunder or reduce the rate of return on capital, as a consequence of the issuing, maintaining or participating in the Loan, to a level below that which the Lender, its affiliates, subsidiaries or participants could have achieved but for such events; then and in such event Borrower shall, promptly upon receipt of written notice to Borrower by the Lender of such increased costs and/or decreased benefits, pay within thirty (30) days of demand therefor to the Lender all such additional amounts which, in the Lender's or participant's sole good faith calculation as allocated to the Loan, shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as certified by the Lender or such participants in said written notice to Borrower. Such certification shall be accompanied by information concerning the calculation of such increased costs and/or decreased

benefits and shall be conclusive and binding on the parties hereto, absent manifest error. In determining such amount, the Lender or any participant may use any reasonable averaging or attribution methods.

32. USA Patriot Act Notification. The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Lender will ask for Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Lender to identify Borrower, and, if Borrower is not an individual, Lender will ask for Borrower's name, taxpayer identification number, business address, and other information that will allow Lender to identify Borrower. Lender may also ask, if Borrower is an individual, to see Borrower's driver's license or other identifying documents, and, if Borrower is not an individual, to see Borrower's legal organizational documents or other identifying documents.

Without limiting the foregoing, Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Lender to identify the Borrower in accordance with the Act.

33. WAIVER OF SPECIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER LENDER NOR BORROWER SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST THE OTHER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

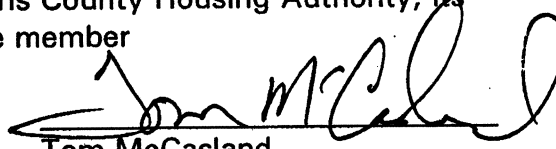


If the foregoing accurately sets forth your understanding of the terms and conditions of the Loan, please indicate your acceptance by signing in the space provided below.

HCHA CYPRESSWOOD ESTATES, LLC, a  
Texas limited liability company

By: Harris County Housing Authority, its  
sole member

By:

  
Tom McCasland,  
Manager

"Borrower"

ACCEPTED AND AGREED TO THIS  
\_\_\_\_\_ DAY OF MARCH, 2013:

COMMUNITYBANK OF TEXAS, N.A.

By:

  
Mahesh S. Aiyer,  
Executive Vice President

"Lender"

SIGNATURE PAGE TO LETTER LOAN AGREEMENT

## **EXHIBIT "A"**

### **SURVEY REQUIREMENTS**

The purpose of this document is to provide information to the borrower, surveyor, and title company regarding survey requirements for loans originated by COMMUNITYBANK OF TEXAS, N.A. ("Lender") that are initially intended to be held in Lender's own loan portfolio. Please note that Lender requires a current survey on all commercial real estate loans. Since Lender requires that the certification on the survey be addressed to the borrower, the title company and the Lender, usually an existing survey is inadequate for loan purposes. Lender will accept revised or updated surveys meeting the Survey Requirements as detailed in this document. Any questions concerning these requirements should be directed to Lender's Closing Department. It is recommended that the borrower reference these requirements when obtaining bids and engaging qualified surveyors.

Surveys must be acceptable to the title insurance company insuring the lien of the mortgage for purposes of insuring title free and clear of any survey exceptions. Surveys must either be prepared in accordance with the latest approved version of the Minimum Standard Detail Requirements for American Land Title Association ("ALTA") Land Title Surveys, jointly established and adopted by ALTA, ACSM and NSPS, and must meet the requirements of the Urban Survey thereunder, or if the subject property is located in the State of Texas, the survey may be prepared in accordance with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey (Land Title, Urban). The legal description of the mortgaged property shown on the face of the survey must conform to the legal description shown in the title insurance commitment for the title insurance policy for the mortgaged property or the legal description shown in the title insurance commitment must be changed to conform to the survey. If the title insurance commitment refers to a recorded plat, then such plat with appropriate recording references must be indicated on the survey.

1. **Field Note Description.** Surveys should contain a certified metes and bounds description and should comply with the following requirements:
  - a. Survey should be of a scale of at least one inch equals fifty feet and should identify the scale used (example 1" = 50').
  - b. The beginning point should be established by a monument located at the beginning point, or by reference to a nearby monument and to the point of commencement.
  - c. The sides of the property should be described by giving the distances and bearings of each. Instead of bearings, the interior angle method is

acceptable if the beginning point is on a dedicated public street line or a fixed line on other property, or if the course of the first side can be otherwise properly fixed.

- d. The distances, bearings, and angles should be taken from an instrument survey by a registered professional engineer or register public surveyor.
  - e. Curved courses should be described by data including: length of arc, radius of circle for the arc and chord distance and bearing.
  - f. The legal description should be a single perimeter description of the entire property. Division of the property with separate parcels is not acceptable unless it serves a special purpose of the mortgage and is approved by in advance by Lender. Division is necessary, however, if the plot is located on two sides of a public way. It is acceptable to describe an easement appurtenant to a fee parcel by using a separate parcel description.
  - g. The description should include a reference to all streets, alleys, and other rights-of-way that abut the property surveyed, and the width of all rights-of-way mentioned should be given the first time these rights-of-way are referenced to.
  - h. For each boundary line abutting a street, road, alley or other means of access, the description must, in calling the boundary line, state that the boundary line and the right-of-way line are the same.
  - i. If the property surveyed has been recorded on a map or plat as part of an abstract or subdivision, reference to such recording data should be made.
  - j. The total acreage and square footage of the land must be shown.
  - k. The metes and bounds description must return to the point of commencement.
2. Lot and Block Description. If the property is included within a properly established recorded subdivision or addition, then a lot and block description or reserve description will be an acceptable substitute for a metes and bounds description, provided that the lot and block description or reserve description completely and properly identifies the name or designation of the recorded subdivision or addition and gives the recording information therefor.

3. Map or Plat. Surveys should also contain a certified map or plat clearly showing the following:
- a. The property to be covered by the mortgage.
  - b. The point of beginning of said property and it's relation to the monument from which it is fixed.
  - c. Corners or boundary stakes, stating material (1/2" I.P., 4" x 4" Concrete, initials or markings) and whether found by surveyor or set by surveyor.
  - d. All distances, angles and other calls shown in the legal description.
  - e. Direction arrow (North).
  - f. If the property has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot, block lines (with distances and bearings), and numbers must be shown.
  - g. All easements appurtenant to said property showing recording information therefor by volume and page, width thereof, and encroachments thereon. In the event easements affect the parcel, but cannot be shown with specificity, you should contact Lender, as blanket easements are generally not permitted.
  - h. The boundary lines of the street or streets abutting the property with the name and width of said streets and whether paved, blacktop, gravel or dirt.
  - i. The distance from the nearest intersecting street or road to the property.
  - j. All encroachments and protrusions if any, from or upon the land or any improvements thereon or upon any easement, building setback line or other restricted area, with exact measurements.
  - k. Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersections(s).
  - 1. Flood zone designation (with property annotation based on Federal Flood Insurance Rate Maps on the State or local equivalent, by scaled map location and graphic plotting only).

- m. Identify and show, if possible, setback, height and bulk restrictions of record or disclosed by applicable restrictive covenant, recorded plat, zoning or building codes (identifying the source in each case, by volume and page reference, if applicable). If none, so state.
- n. The exterior dimensions of all buildings at ground level with horizontal lengths of all sides and the relation thereof by distances to (i) all boundary lines of the property, (ii) easements, (iii) established building lines and (iv) street lines.
- o. All street addresses of all improvements on the subject property.
- p. Substantial, visible improvements (in addition to buildings) such as signs, parking areas (showing number and striping) or structures, swimming pools, driveways, fences, sidewalks, stoops, landscaping, etc.
- q. Parking areas and, if striped, the striping and the type (e.g., handicapped, motorcycle, regular, etc.) and the number of parking spaces.
- r. Indication of access to a public way such as curb cuts, or driveways marked.
- s. Location of utilities serving or existing on the property including points of ingress to and egress as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information).
- t. A legend of all symbols used in the survey.
- u. The scale of all distances and dimensions on the plat.
- v. The date of any revisions subsequent to the initial survey prepared pursuant to these requirements.
- w. Significant observations not otherwise disclosed, including, but not limited to visible evidence of unusual subsurface matters and general knowledge about the neighborhood (such as condemnation of the area by the US Environmental Protection Agency (EPA) or restricted building heights imposed by the Federal Aviation Administration (FAA)).



- x. Areas devoted or restricted in reciprocal easement agreements, showing the limits of any off-site appurtenant easements and the outline of any buildings within the reciprocal easement.
  - y. A note stating that the legal description describes the same property as the title commitment.
  - z. Observable evidence of earth moving work, building construction or building additions within recent months.
  - aa. Any changes in street right of way lines, either completed or proposed and available from the controlling jurisdiction, observable evidence of recent street or sidewalk construction or repairs.
  - ab. Observable evidence of site use as a solid waste dump, sump or sanitary landfill.
  - ac. The number of stories of all structures and the types of materials comprising the exterior walls and roofs of all buildings.
  - ad. The mean highwater base line or other legal boundary of any bodies of water adjoining or located on the premises.
  - ae. Observable evidence of cemeteries.
4. **Surveyor's Certification.** The undersigned hereby certifies to **COMMUNITYBANK OF TEXAS, N.A.,** ("Lender"), \_\_\_\_\_, ("Borrower") and \_\_\_\_\_, ("Title Company") that as of the date of preparation of this survey, and as of the latest revision date prior to the execution of this document, if any, shown on this survey that: (i) I am a duly registered land surveyor in the State of \_\_\_\_\_; (ii) this survey was made on the ground by me or under my direct supervision; (iii) this map or plat and the survey on which it is based were made in accordance with the most recent "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and NSPS, and includes optional items 2, 3, 4, 5, 8, 10, 11(b), and 17 of Table A thereof. (Note: Item 5 from Table A only needs to be included if there is 1) a change in grade elevation anywhere across the property of 3 ft. or more vertically within 60 ft. horizontally, 2) a change in grade elevation of 5 ft. or more vertically across the overall property, and/or 3) an abrupt change in grade elevation anywhere in the property of 2 ft. or more vertically.); (iv) in my professional opinion, pursuant to the Accuracy Standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of this certification, the Relative Positional

Accuracy of this survey does not exceed that which is specified therein; (v) I have received and examined a copy of the ( Legal Description ) (Title Insurance Commitment No. \_\_\_\_\_ issued by the Title Insurer as well as a copy of each instrument listed therein ) and the subject land and each tract or parcel thereof described in this survey is the same land as described in the (Legal Description) (Title Commitment), and; (vi) except as shown on this survey, no part of the subject land is located in a 100 - year Flood Plain or in an identified "flood prone area," as defined pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel # \_\_\_\_\_ dated \_\_\_\_\_, which such map panel covers the area in which the subject land is situated.

5. Seal and Date. Immediately below the certification must appear the signature, seal and registration number of the registered public surveyor who made the survey, or under whose supervision the survey was made, and the date of the survey must be dated within ninety (90) days of the closing date.

## **EXHIBIT "B"**

### **TITLE INSURANCE AND ESCROW CLOSING REQUIREMENTS**

The purpose of this document is to provide information to the borrower and title company regarding title insurance requirements for loans originated by COMMUNITYBANK OF TEXAS, N.A. ("Lender") which are secured by properties located in the State of Texas and initially intended to be held in Lender's own loan portfolio. If one or more of the properties securing the subject loan are in a state other than Texas, Lender requires a title commitment rather than a preliminary title report and an ALTA Lender Policy (1970 or 1992) with comprehensive mechanic's lien coverage. For properties located outside the State of Texas, Lender provides additional closing, title and title insurance requirements. For properties located in the State of Texas, this document provides requirements for the commitment to insure title ("Title Commitment"), the interim construction title binder ("Title Binder"), the mortgagee policy of title insurance ("Title Policy") and for the closing functions and procedures to be performed by the title company ("Escrow Closing"). Time constraints provided in these instructions are very important in order to prevent delays in closing and funding. Additional requirements for a particular loan shall be at the sole discretion of Lender.

#### **Title Commitment**

The Title Commitment is required well in advance of closing, must be prepared using the Texas Land Title Association ("TLTA") form T-7 and meet the following requirements:

1. Each title insurance policy must be written by an insurer authorized to do business in the State of Texas, licensed by the Texas Insurance Commission and have an acceptable rating from at least one of the independent rating agencies as follows:
  - (a) "Financial Stability Rating" of "S" (Substantial) or better or a "Statutory Accounting Rating" of "C" (Average) or better from Demotech, Inc.;
  - (b) a "BBB" or better rating from Duff and Phelps Credit Rating Company;
  - (c) a "C" or better rating from LACE Financial Corporation;
  - (d) a "BAA" or better rating from Moody's Investor Service, or
  - (e) a "BBB" or better rating from Standard and Poor's, Inc.

Lender reserves the right to approve the title insurance underwriter. Coinsurance will only be allowed with prior written approval of Lender. Reinsurance may be required in certain cases. Lender must be notified in advance if Coinsurance or Reinsurance is expected or being considered.

2. Name of Insured: The Insured in Schedule A shall be as follows: "Capital One, its successors and assigns".
3. Coverage shall be for the full amount of the loan.
4. The effective date must be within ninety (90) days of the anticipated date of closing.
5. The Title Commitment must include, as attachments, legible copies of all recorded instruments which are listed as exceptions (both Schedule B and C) to the coverage of the Title Commitment, including legible copies of recorded plats.

**Title Binder**  
**(NOT APPLICABLE)**

Acceptance of a Title Binder in lieu of a Title Policy on construction and development loans is an exception to Lender's loan policy and must be approved by Lender, which approval may be conditioned on satisfaction of additional loan covenants. In the event that the subject loan involves development or construction and Lender has approved its usage, the Title Binder must be prepared using Form T-13 and meet the following requirements:

1. The "pre-start" exception on Item 1(a) of Schedule C must be deleted, and
2. Meet all of the requirements listed below for a Title Policy.

**Title Policy**

Lender may require the title company to deliver a pro forma Title Policy in advance of the loan closing. The Title Policy must be prepared using TLTA form T-2 and meet the following requirements:

1. Name of Insured. The Insured in Schedule A, Paragraph 1, shall be as follows: "COMMUNITYBANK OF TEXAS, N.A. and each successor in ownership of the indebtedness secured by the insured mortgage, except a successor who is an obligor under the provisions of the Conditions and Stipulations."

2. **Description of Mortgage.** The description of the deed of trust appearing in Schedule A, Paragraph 3, must include the precise name of the security instrument (e.g. "Multifamily Deed of Trust, Assignment of Rents and Security Agreement"); the names of the parties; the date of the deed of trust; the principal amount of the loan; and recording data, i.e. the recorder's office, the date of recordation and the book and page numbers and/or instrument number. If a separate Assignment of Leases is to be utilized, it should be included in Schedule A, in the same paragraph as the mortgage as described above.
3. **Legal Description.** The legal description on the Title Policy must be identical to the legal description contained on the survey. Rights under access easements and off-site utility easements must also be insured.
4. **Title Vesting.** The name should include partnership/limited liability company/corporate status and state of organization.
5. **Lien Status.** The insured lien must be shown as a first and superior lien except as to current ad valorem taxes. Schedule B Exceptions must include the following:
  - (a) Recording information for each instrument to which it refers.
  - (b) A description of the UCC Financing Statements(s) that will be recorded in the appropriate governmental records, as instructed in the "Escrow Closing Instruction Letter" to be provided by Lender's Counsel, with clerk's file numbers or other applicable identifying information, along with the date and place of recording.
6. **Unacceptable Schedule B Exceptions.** The following Schedule B exceptions are not permitted:
  - (a) **Exception For Taxes Which Are Due And Payable.** Any taxes which are due and payable must be paid prior to closing. An exception for future taxes and assessments not yet due and payable is permitted. An exception for taxes due for prior years because of a change in usage (i.e. agricultural exemption or open space exemption) is not permitted. The Tax Deletion Endorsement is required (TLTA form T-30).
  - (b) **Survey Exception.** A survey has been or will be prepared. A copy of the Title Commitment must be provided to the surveyor as soon as available, together with any documents listed as exceptions to the Title Commitment and describing easements located on or affecting the project. The Lender's Closing Department has contact information

regarding the surveyor. The Survey Deletion Endorsement (i.e. area and boundary deletion) is required (Texas Rule P-2). If the title company takes exception to items shown on the survey, a Comprehensive Endorsement (TLTA form T-19) may be required.

- (c) **Blanket Exception.** Blanket exceptions of any kind, including those for subordinate liens, are not permitted, except as required by the Texas Title Insurance Rate Rules.
  - (d) **Maintenance fee liens not subordinated.** Maintenance association fee liens must be subordinated to Lender's first lien. Unless waived in writing by Lender, a subordination agreement will be required before closing for review and approval by Lender's Counsel if those liens are not already subordinated.
  - (e) **Mechanics' And Materialmen's Lien Exception.** Except on construction or development loans, there will be no exception for mechanics' and materialmen's liens. On construction or development loans, it is permitted to have a blanket exception for mechanic's and materialmen's liens recorded after the date of recording of Lender's deed of trust, and upon completion of improvements, a TLTA T-3 Endorsement Form must be issued deleting any mechanic's and materialmen's lien exceptions. If there are any special requirements (e.g., stipulations against liens, owner's affidavits, etc.) which must be met, Lender must be notified immediately.
  - (f) **All laundry leases and other commercial leases creating possessory rights must be subordinated to Lender's first lien, and subordination/estoppel certificates must be signed for each.** The seller/owner must be contacted regarding this requirement if the title search reveals any such lease(s). Subordination agreements must be approved by Lender in advance.
  - (g) **Lender reserves the right to object to any title exception, including the preprinted exceptions contained in TLTA Form T-2.**
7. **UCC Searches.** Except when waived by Lender, UCC searches must be conducted at the expense of borrower, at both the state and county levels, of the appropriate UCC filing records for any filings in the name of the borrower, the owner(s) and the project name. If the borrower/owner is a corporation, the searches shall be in the name of the corporation; if the borrower/owner is a limited partnership, the searches shall be in the name of the limited partnership and in the name of the sole manager thereof; and if the project is owned by one or more individuals, then the searches shall be

in the names of such individuals and any trade name employed by them. Lender's Closing Department must be contacted to verify names to search. Copies of items which create security interests against the named party must be ordered to determine if they affect the insured. Results of searches must be sent to Lender's Closing Department as soon as they are available.

8. **Tax Certificates.** Tax certificates for ad valorem property taxes must be ordered from all applicable taxing authorities, including associations when applicable. Tax Certificates must be sent to Lender's Closing Department as soon as they are available.
9. **Required Endorsements and Policy Provisions.** The following endorsements are typically required with the final Title Policy. The final determination of required endorsements will be provided in the Escrow Closing Instruction Letter prepared by Lender's Counsel.
  - (a) Any arbitration provisions of the Title Policy must be deleted.
  - (b) The exception for parties in possession must be deleted upon satisfactory inspection by the Title Company.
  - (c) If the insured property is within a planned unit development, a Planned Unit Development Endorsement (TLTA form T-17).
  - (d) When required by Lender at the time of conversion to the permanent financing, a Comprehensive Endorsement (TLTA form T-19).
  - (e) If access to the insured property is by easement, an Access Endorsement (TLTA form T-23) and the Title Policy must include the easement as part of the insured property on Schedule A.
  - (f) If the legal description of the insured property describes two or more adjacent tracts of property, a Contiguity Endorsement (TLTA form T-25).
  - (g) Tax Deletion Endorsement (TLTA form T-30).
  - (h) If the property is for residential usage, an Environmental Protection Lien Endorsement (TLTA form T-36).
  - (i) Lender may require other endorsements or express insurance, including but not limited to the following: First Loss Endorsement (TLTA form T-14), Last Dollar Endorsement (TLTA form T-15), Aggregation Endorsement (TLTA form T-16), Adjustable Rate

Endorsement (TLTA form T-33), Revolving Credit Endorsement (TLTA form T-35).

10. Required Delivery. The final Title Policy, with all required endorsements, must be in Lender's office within seventy-two (72) hours of funding.

#### **Escrow Closing**

Lender requires the title insurer or its affiliate or agent to act as escrow agent for the loan proceeds and to conduct the closing.

1. Disbursement and Insured Closing Letter. If the title company is an agent of the title insurer, it will be necessary to have the title insurance company provide Lender with an insured closing protection letter from the title insurer prior to closing. The title company should contact the Lender's Closing Department to determine if an insured closing letter is on file. The original letter should be addressed to Lender. The insured closing protection letter must authorize the title company to close the loan and disburse the loan proceeds in accordance with an Escrow Closing Instruction Letter to be provided by Lender or Lender's Counsel prior to closing. A copy of the HUD-1 Settlement Statement should be faxed to Lender at least twenty-four (24) hours prior to closing. Lender must approve in advance any fee attorney to be utilized and will not disburse funds through a fee attorney.
2. Pay-off Estimates. Lender does not obtain estimates of the pay-off figures for existing indebtedness secured by the project. It will be the responsibility of the title company to obtain in writing and verify the amount(s) required to retire any and all outstanding loans and, in cooperation with the borrower (or seller, if any), to arrange for satisfactory releases of existing mortgages and termination statements of existing financing statements.
3. Costs and Expenses. Lender's Closing Department shall provide a separate letter prior to closing which details all Lender related settlement charges. The services and costs of the escrow agent and title insurance company are to be performed without cost to the Lender or Lender's Counsel. Arrangements with the borrower should be made for the payment of all such costs. The escrow agent should collect adequate funds from the borrower to send the Financing Statements by overnight mail to a recording service to ensure the documents will be received back from the county and state to meet the delivery requirements listed in this document.
4. Title Policy. The Title Policy must be issued by the title insurance underwriter specified in the title commitment furnished for the loan closing.



5. **Property Insurance.** Lender's Closing Department will be responsible for reviewing and approving the required insurance policies. The escrow agent will be required to verify with Lender's Closing Department, prior to funding, that insurance coverages are adequate.
6. **Loan Documents and Closing.** Lender's Counsel prepares loan documents and an Escrow Closing Instruction Letter. Any changes made on legal documents at closing must be approved in advance by Lender's Counsel. The title company is responsible for the completion, execution, attestation and notarization, where necessary of each of the loan documents in accordance with the Escrow Closing Instruction Letter.
7. **Disbursing Funds.** Loan funds necessary for closing by Lender are wired to the escrow agent. Funds may be disbursed only at such time as:
  - a. The loan documents are properly executed,
  - b. The escrow agent is in a position to deliver the Title Policy and required endorsements to the Lender pursuant to the Title Commitment and in compliance with the terms of this document and the Escrow Closing Instruction Letter,
  - c. All water charges, sewer assessments, special assessments and real estate taxes currently due and payable are paid, or the escrow agent has arranged to pay, from loan proceeds or borrower funds, any of these items which are due and not yet paid,
  - d. All prior financing statements filed in the name of the borrower, as debtor, with the office of the Secretary of State are satisfied and released or the escrow agent has arranged to pay, from loan proceeds, any item which has not yet been paid and shall obtain a release,
  - e. The required insurance coverages acceptable to Lender are in place and have been paid for, and
  - f. The Lender's Closing Department has provided instructions in person or by facsimile to disburse the loan funds in accordance with the approved Settlement Statement.

8. **Document Recording.** It is essential that recordation of the Deed of Trust and the Financing Statement (UCC-1) (the "Recorded Documents") take place on the same day as the loan funding whenever possible. Therefore, documents should be hand-carried to the county clerk's office. If documents are going out of town, including those to the Secretary of State's office, they should be sent by overnight delivery to a recording service or local agent of the title company in anticipation of the wire transfer being received, so that they will be in the recording office when the funding is to occur. Lender must have one recorder-certified copy of each recorded document no later than seventy two (72) hours following the closing. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder's receipt reflecting the recording date.

9. **Post-closing.**

a. **If not received by Lender at closing, Lender's Closing Department must receive the following within twenty four (24) hours after closing:**

- (1) One (1) original and one (1) certified copy of the Note.
- (2) One (1) original and one (1) certified copy of each Guaranty (if more than one).
- (3) One (1) original and one (1) certified copy of each of the loan documents.
- (4) One (1) original and one (1) certified copy of the resolutions of the borrower.
- (5) Two (2) certified copies of the HUD-1 Settlement Statement.
- (6) Payment for loan fees, preliminary interest and escrow reserves should be made out in separate checks, payable to COMPASS LENDER (or wired to a designated account).

b. **Within seventy-two (72) hours after closing, Lender must receive the following:**

- (1) One (1) original and one (1) certified copy of the Mortgagee Title Policy (or Title Binder) including "jackets", with all required endorsements.

- (2) One (1) recorder certified copy of each of the Recorded Documents. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder's receipt reflecting the recording date.
  - (3) One (1) recorder-certified copy of each of the UCCs. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder's receipt reflecting the recording date.
- c. **Within twenty-one (21) days after closing, Lender must receive the following:**
  - (1) The original Recorded Documents.
  - (2) The original UCCs.

## **EXHIBIT "C"**

### **INSURANCE REQUIREMENTS**

#### **General Requirements**

This document provides a summary of the insurance requirements in the loan documents and if any conflict exists between this document and the loan documents, then the loan documents prevail.

All insurance policies must contain the complete address of the property (or a recognizable legal description), be for terms of at least one year, with premium prepaid, be subject to the approval of the Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates. All policies must have a cancellation provision that provides that the carrier will notify the Lender in writing at least ten (10) days in advance of any policy reduction or cancellation for nonpayment of premium, and at least thirty (30) days for any other reason.

Blanket or master insurance policies for several buildings or locations are allowed if the property is fully protected as if a separate policy has been issued for 100% of replacement cost of the improvements at the time of the loss and property is identifiable in the policy. Other requirements are as follows:

- **Mortgagee clause:** All insurance policies covering the property must include a standard, non-contributory, mortgagee clause naming **EXACTLY: COMMUNITYBANK OF TEXAS, N.A.**, its successors and assigns, **\_(a)** as an additional insured under all liability insurance policies, **(b)** as the first mortgagee on all property insurance policies and **(c)** as the loss payee on all loss of rents or loss of business income insurance policies; **(d)** in the event of loss, notice of loss is required to be sent to Lender.
- **Carriers:** All insurance carriers must be fully licensed and authorized to do business in the state within which the property is located and who have and maintain a rating of at least A from Standard & Poor's or equivalent or if the loan is less than \$15,000,000, have a Best's general policyholder's rating of A or better and a financial size category of V or greater.

#### **Property Insurance Requirements**

The borrower must keep the improvements of the property insured at all times by carriers satisfactory to Lender against loss by fire and other hazards.

- **Hazard insurance** is required to provide coverage against loss or damage to the property from fire, windstorm, hail, and such other insurance with respect to the Property or on any replacements or substitutions thereof of additions thereto as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, with limitation, sinkhole, mine subsidence, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy. Such insurance must (1) be written on an "All Risk" basis with replacement cost in an amount not less than 100 percent of the replacement cost of the improvements without any deduction for depreciation (Replacement value for the cost of excavations, foundations and footings below the lowest basement floor may be excluded.), and (2) either contain no coinsurance clause or contain a coinsurance clause that is offset by an annually updated "agreed amount endorsement". Borrower shall also maintain insurance against loss or damage to furniture, furnishing, fixtures, equipment and other items (whether personalty or fixtures) included in the property to the extent applicable. If the hazard policy covers more than one year, an "Inflation Guard" endorsement is required to provide for annual adjustment of the insurance amount based on inflation. "Ordinance or Law Coverage" or "Enforcement" endorsement is required if any of the improvements or the use of the property shall at any time constitute legal nonconforming structures or uses, unless there is evidence acceptable to Lender that, in the event of a loss, the municipality will permit Borrower to rebuild to the specifications that existed at the time of the loss. There should be, at a minimum, coverage for the following: (i) loss of undamaged portion of the Mortgaged Premises due to enforcement of any ordinance or law in the overall policy amount; (ii) demolition cost with no less than the full demolition expense of the single largest structure on the Mortgaged Premises; and (iii) increased cost of construction in an amount sufficient to replace or rebuild the single largest structure of the Mortgaged Premises to comply with applicable building codes. The maximum deductible amount is \$25,000.
- **Business/Rent loss insurance** is required for all income properties to cover losses due to fire and other hazards. A minimum of twelve (12) months' coverage is required. Coverage must be adjusted annually to reflect current rent rolls or revenues.
- **Building ordinance or law coverage** is required where the Property represents a "nonconforming" use under current building, zoning or land use laws or ordinances. This coverage may be waived if Lender is provided with satisfactory evidence that, in the event of loss, the municipality will permit the

Property to be rebuilt to the specifications of the Property that existed at the time of the loss. Building Ordinance or Law Coverage must include coverage for all of the following:

- (1) The cost to demolish and clear the site of undamaged parts of the Property as such demolition may be required by enforcement of any building, zoning or land use law or ordinance (The amount of coverage must be no less than the full demolition expense of the single largest structure on the property.)
- (2) Loss of undamaged portion of the Property due to enforcement of any ordinance or law (The coverage must be in the overall policy amount.)
- (3) Increased cost of construction to allow the Borrower to rebuild the Property to meet all applicable building codes (Such coverage must be in an amount sufficient to replace or rebuild the single largest structure on the Property in compliance with applicable building codes.)

A separate Building Ordinance or Law Coverage Endorsement if the master/blanket policy includes Building Ordinance or Law Coverage for all locations covered under the policy will not be required. Lender will approve the amount of coverage on a per property basis.

- **Steam boiler and machinery insurance** is required where steam boilers, pipes, turbines, engines or other pressure vessels are in operation on the mortgaged property. The policy should be in an amount equal to at least \$2 million or 100% of the full replacement cost of the buildings) housing the equipment. A rider to include electrical machinery and equipment, air conditioning, refrigeration and mechanical objects is recommended and may be required.
- **Flood insurance** is required if the improvements or any part thereof are now or in the future become situated in an area designated by the Federal Emergency Management Agency ("FEMA") as a special flood hazard area. Coverage should be in an amount equal to the lesser of (a) replacement cost of the affected improvements or (b) the maximum limit of coverage available through the appropriate National Flood Insurance Administration program. The maximum deductible amount is \$5,000 or one percent of the applicable amount of coverage, whichever is less.

- **Windstorm Insurance** is required in the amount of the insurable value of the Improvements with a deductible amount of the lesser of 2% of coverage or \$200,000.00. The foregoing requirement for windstorm insurance shall be adjusted to reflect then current windstorm insurance requirements for like projects located in the same geographic location of the Improvements ("Comparable Properties"); provided that Lender reserves the right to determine what shall be considered Comparable Properties and the right to independently verify such windstorm insurance requirements for Comparable Properties; provided further, Lender will consider higher deductibles for the foregoing windstorm insurance requirements based on market trend changes in the multifamily housing industry.

#### **Builders Risk Insurance Requirements**

Builders risk insurance coverage is required for new construction, renovation or alteration of existing improvements which exceed the lesser of 10% of the principal amount of the loan or \$500,000. The policy should cover "all risks" to the premises and improvements, including materials stored on the property and elsewhere, in an amount equal to 100% of the replacement cost of the improvements, and include the perils of collapse, water damage and flood. A deductible for wind damage in the amount of the greater of (i) 2% of such wind damage, or (ii) \$50,000.00 is permitted. The insurance required under this paragraph shall be made available on or before the first advance of the Capital Contribution or Loan, as applicable, of the Loan or the Capital Contribution, as applicable, for the slab.

#### **Liability Insurance Requirements**

The borrower must obtain or be covered by at least \$1 million for bodily injury and property damage for any single occurrence, with a general aggregate limit of \$2 million. However, coverage for bodily injury and property damage for a single occurrence must be increased to \$2 million with a general aggregate limit of \$3 million for properties with elevators. Coverage must include, but not be limited to, the following: (i) swimming pool liability where applicable; (ii) host liquor liability where applicable; (iii) elevator collision liability where applicable (if not included in standard general liability policy); (iv) comprehensive automobile liability (owned, non-owned and/or leased); (v) garage keeper liability, if applicable; (vi) worker's compensation and employer's liability when required by applicable law, ordinance or other regulation; (vii) bailee's liability (added either to property damage or CGL policy); (viii) employee fidelity coverage for third-party managed Property, the Borrower must obtain evidence of such coverage by the manager for the benefit of the Borrower (or the Borrower, if self-managed) in an amount equal to a minimum

of three (3) months rental income or gross revenue generated from the Property (added either to property damage or CGL policy). Lender may require additional amounts if it is determined that special risks exist. Liability coverage must provide for claims to be made on an occurrence basis. Master/blanket policies are acceptable provided that those policies clearly show that both the occurrence and general aggregate limits contained therein apply per location or per project. The foregoing policies may contain a deductible up to \$5,000.00.

### **Evidence of Insurance**

At the closing of the mortgage loan, the borrower must supply Lender with either the original policies or certified true copies thereof, when possible. If an insurance binder or a certificate of insurance and an Evidence of Insurance Form (ACORD Form 27) is provided at closing, the original policy(ies) or certified duplicate copy must be received within sixty (60) days of closing. During the life of the mortgage loan, renewal policies must be in Lender's office at least thirty (30) days prior to the expiration date of the existing policy(ies). Continuous coverage is required by Lender, so if a policy is not in Lender's possession prior to the expiration date of the existing policy, a policy will be force placed with an insurance carrier of Lender's choice. Requirements for the acceptance of other than the original policy of hazard insurance are as follows:

- (4) Receipt of a legible copy of the master of the blanket policy with all related endorsements, including the signature of an officer or authorized agent, indicating the address of the mortgaged premises and the amount of coverage attributable to the security for the mortgage.
- (5) Receipt of a copy of the standard non-contributory mortgagee clause as provided above.
- (6) If the policy is a duplicate policy, it must be stamped "true and certified duplicate copy". It must contain duplicates of all riders, forms, attachments and endorsements that are attached to said Master Policy as they relate and apply to the specific property known as "insured premises", on which Lender holds the first mortgage.

Lender will require proof each year (by a Certificate of Insurance) that the borrower has workers' compensation insurance and employer's liability insurance in effect on the Mortgaged Premises. IF THESE COVERAGES ARE PROVIDED BY THE MANAGEMENT COMPANY FOR ITS EMPLOYEES, PLEASE ADVISE.

**The address of the Lender is as follows:**

C-5



COMMUNITYBANK OF TEXAS, N.A.  
5999 Delaware  
Beaumont, Texas 77706-7607

Notwithstanding anything to the contrary set forth herein or in any of the other Loan Documents, the foregoing insurance requirements shall be adjusted to reflect then current insurance requirements for like projects located in the same geographic location of the Improvements ("Comparable Properties") provided that Lender reserves the right to determine what shall be considered Comparable Properties and to independently verify the insurance requirements for such Comparable Properties. Without limiting the foregoing, Lender will consider higher deductibles for the foregoing insurance based on market trend changes in the multifamily industry.