



HARRIS COUNTY AUTHORITY

1933 Hussion Street, Building #3
Houston, Texas 77003

713-578-2100

www.hchatexas.org

REQUEST FOR PROPOSALS for Financial Services – Mortgage Refinancing RFP NO. 21-04

The Harris County Housing Authority ("HCHA") on behalf of HCHA Baybrook Park, LLC ("**Baybrook**") hereby solicits proposals from qualified financial institutions ("**Offerors**") to refinance the existing mortgage for Baybrook Park Retirement Center. Baybrook is seeking competitive refinancing terms to refinance the existing indebtedness of \$2,600,000.00 and to provide cash-out funds. The HCHA is seeking additional cash for potential capital improvements, owner's reserves, and furthering the HCHA's Affordable Housing Program. The targeted loan amount is \$3,600,000 to \$4,600,000.00 as specified in this Request for Proposal (RFP).

This RFP contains submission requirements, the scope of service, period of services, terms, and conditions, and other pertinent information for submitting a proper and responsive submittal. RFP #21-04 will be posted on and can be downloaded from HCHA's website www.hchatexas.org.

Prospective **Offerors** desiring any explanation or interpretation of this solicitation must make the request in writing no later than October 12, 2021. The request must be emailed to Gayla Mickens at Gayla.Mickens@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. All **Offerors** are encouraged to check the HCHA website for amendment(s) issuance.

The proposal(s) must be emailed as a PDF attachment to Gayla Mickens at Gayla.Mickens@hchatexas.org and include the following in the subject line: **Financial Services – Mortgage Refinancing. RFP #21-04, Due Date and Time: October 22, 2021, 2:00 P.M. (CST), Name of Offeror _____.**

Submittals must reach HCHA no later than **2:00 P.M. (CST) on October 22, 2021**. Late submissions will be handled in accordance with the provisions in Form HUD-5369-B, titled "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 evaluating the proposals, the contract will be awarded to the responsible **Offeror(s)** whose qualifications, project proposal, and other factors considered are the most advantageous to **HCHA**.

HCHA reserves the right to reject any and all submissions.

Horace Allison, AIA

Horace Allison, CEO
Harris County Housing Authority

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1. PROFILE OF THE HARRIS COUNTY HOUSING AUTHORITY

The Harris County Housing Authority ("**HCHA or Authority**") is governed by the Texas Housing Authorities Law, codified in the Texas Local Government Code. The **HCHA** is a unit of government, and its functions are essential governmental functions. It operates and manages its affordable housing development 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 **HCHA** is a Public Housing Agency ("**PHA**") that administers HUD's Section 8 Housing Choice Voucher ("**HCV**") and Veteran 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 necessary and convenient to exercise 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 Baybrook Park, LLC (**Baybrook**) is an affiliate of the **HCHA**, and its Board is comprised of members of the **HCHA** Board of Commissioners. **Baybrook** 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 Baybrook Park Retirement Center. The current mortgage balance is approximately \$2,600,000.00. This **RFP** will consider qualifications, rates, and loan terms/conditions in the selection process. The financial services to be performed are 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/Baybrook 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 the 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.

Offerors are required to submit written proposals that present the **Offeror's** qualifications and understanding of the services to be performed. The **Offeror's** proposals should be prepared simply and economically and should provide all information it considers pertinent to its qualifications for the scope of services contained herein. Emphasis should be placed on the completeness of services offered and clarity of content of the proposal.

The proposal must be submitted no later than **2:00 P.M. on Friday, October 22, 2021**, to the following email address:

Harris County Housing Authority
Attn: Gayla Mickens
1933 Hussion Street, Building #3
Houston, TX 77003
Email: gayla.mickens@hchatexas.org

3. PROCUREMENT SCHEDULE

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

SCHEDULE

<u>EVENT</u>	<u>DATE</u>
Advertised	October 3 and October 10, 2021
Pre-submission Conference	N/A
Receipt of Written Questions	October 12, 2021
Response to Written Questions	October 14, 2021
Submission Date	October 22, 2021

4. DELIVERABLES

Proposals must be emailed as a PDF attachment to gayla.mickens@hchatexas.org. Electronic submission of the proposal shall be considered signed by a principal or authorized representative of the **Offeror**. **Electronic submissions must be received by the due date and time for consideration and must not exceed 25MB.**

Offerors are solely responsible for ensuring that their proposals are 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 **2:00 P.M. CST on October 22, 2021**, by email attachment. When submitting an electronic copy of the proposal, the subject line must contain the title **“Financial Services – Mortgage Refinancing: Baybrook Park Retirement Center” - Request for Proposals. RFP #21-04, Due Date and Time: September 24, 2021, 2:00 P.M. (CST), Name of Offeror: _____.**

Submission Place/Address

Proposals must be submitted (emailed) to **Attn: Gayla Mickens, Harris County Housing Authority, 1933 Hussion Street, Building #3, Houston, Texas 77003** at the following email address gayla.mickens@hchatexas.org.

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

5. PRICES AND TERMS

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

6. GENERAL REQUIREMENTS

All submittals must conform to the requirements outlined herein. **HCHA/Baybrook** 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/Baybrook**, Harris County Community Services Division (**CSD**), **HUD**, and local officials as may be necessary.
- Coordinate all services with **HCHA/Baybrook**.
- Coordinate all services with other parties as determined necessary by **HCHA/Baybrook**.
- List the firms' names, contact persons, telephone numbers, 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 Gayla Mickens at gayla.mickens@hchatexas.org by **October 12, 2021**. 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 to change or clarify the intent of this **RFP**. All amendments shall be binding in the same way as if originally written in this **RFP**. It is the Offeror's responsibility 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(s). **HCHA/Baybrook** 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/Baybrook** or **HCHA/Baybrook** 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/Baybrook** or **HCHA/Baybrook** 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/Baybrook**.

Proposals shall describe the **Offerors'** proposed compensation structure, including fee and payment schedule.

8. DOCUMENT REQUIREMENTS

The following is a description of the minimum information, which Offerors must supply in their submittals. It is up to the **Offeror** to give such supplementary facts or materials that it considers may be of assistance in evaluating 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 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/Baybrook's** needs. List the institution's team members, roles, responsibilities, qualifications and identify the primary contact person.
- IV. 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.
- V. A brief statement summarizing the **Offeror's** understanding, methodology/strategy to accomplish the requested services.
- VI. **Offeror** shall provide an anticipated timeline to complete the refinancing transaction.
- VII. 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
 - Deposit Requirement
 - Timeline for Closing
- VIII. References.
- IX. Certifications and Affidavits. Offerors shall submit executed versions of the following:
 - Attachment B:** Conflict of Interest Questionnaire (CIQ)
 - Attachment C:** M/WBE Participation Form
 - Attachment F:** Certifications and Representations of Offerors for Non-Construction

Contracts (Form HUD 5369-C)

Attachment H: Form of Non-Collusive Affidavit

Attachment I: Certification of Payments to Influence Federal Transactions

Attachment J: Declaration (Required Submission)

9. EVALUATION CRITERIA

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

An Evaluation/Selection Committee will evaluate proposals. This committee will review the proposals and recommend them to the Chief Executive Officer (**CEO**) and **Baybrook Manager**. The **CEO/Manager** will present the recommendation to the Board of Commissioners of **HCHA** and the Board of Directors of **Baybrook**, seeking approval to negotiate and execute all documents required to effectuate the refinancing of **Baybrook Park**.

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/Baybrook**. All proposals shall be evaluated, and up to the 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/Baybrook**. Additionally, **HCHA/Baybrook** shall have the right to reject any and all proposals at its discretion.

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

The **RFP** will be evaluated and rated on, but may not be limited to, the following criteria:

CRITERIA	POINTS
Interest Rate	30
Loan to Value Ratio, DSCR, and other underwriting criteria	20
Favorable Prepayment Penalties	20
Lender Profile, References, and Experience of Key Personnel	15
Schedule of Performance/Timeliness	15
Total Points Possible	100

10. AVAILABILITY OF RECORDS

HCHA/Baybrook 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 the 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/Baybrook** 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 **Baybrook**.

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/Baybrook** 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 that employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

15. STATEMENT OF OWNERSHIP

The proposal shall contain the legal name of the financial institution with whom **HCHA/Baybrook** will enter into the financial transaction to refinance Baybrook by name, address, phone number, and name of the 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 Baybrook Park, LLC ("**Baybrook**") hereby solicits proposals from qualified financial institutions to refinance the existing mortgage for Baybrook Park. Baybrook Park is seeking competitive refinancing terms to refinance the existing indebtedness of \$2,600,000.00 and to provide cash-out funds. The targeted loan amount is \$3,600,000.00 to \$4,600,000.00 as specified in this Request for Proposal (**RFP**).

Baybrook Park Retirement Center is located at 500 W Texas Avenue, Webster, TX 77598.

Baybrook Park comprises 68 - 1 bedroom/1 bath units and 32 - 2 bedroom/2 bath units that range in size from 650 sq.ft. to 972 sq.ft. Baybrook Park is wood frame with stucco/brick veneer construction. It is situated on 5.6 acres of land. Baybrook Park was constructed in 2006. Baybrook Park serves elderly households meeting the following income tiers:

30%AMI

50%AMI

60%AMI

80%AMI

Market Rate Units

ATTACHMENT B

Conflict of Interest Questionnaire (CIQ)

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ**For vendor doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

ATTACHMENT C

M/WBE Participation Form

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 the 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 Contractor.

CONSULTANT

DATE

BIDDER'S PROPOSED E/WBE PARTICIPATION FORM

Bidder proposes to work with the following MBE/WBE participants:

[illegible]

**SAMPLE FORMAT FOR RECORDKEEPING
ESTIMATED PROJECT WORKFORCE BREAKDOWN**

M/WBE PARTICPATION

JOB CATEGORY	TOTAL ESTIMATED POSTIONS NEEDED FOR PROJECT	NO. POSITIONS OCCUPIED BY PERMANENT EMPLOYEES	NUMBER OF POSITIONS NOT OCCUPIED	NUMBER OF POSITIONS TO BE FILLED WITH M/WBE
OFFICER/SUPERVISOR				
PROFESSIONAL				
TECHNICAL				
OFFICE/CLERICAL				
SERVICE WORKERS				
TRAINEES				
CONTRACTS:				
OTHERS				

ATTACHMENT D

Affirmative Action for Disabled Workers

AFFIRMATIVE ACTION FOR DISABLED WORKERS

41 CFR 60-741.4

41 CFR 60-250.4

- (a) The Consultant will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Consultant agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.
- (b) The Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (c) In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (d) The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice in a form to be prescribed by the Chief Development Officer, provided by or through the HCHA. Such notices shall state the Consultant's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- (e) The Consultant will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or other understanding, that the Consultant is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.
- (f) The Consultant will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontract or vendor. The Consultant will take such action with request to any subcontract or purchase orders as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- (g) The Consultant will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified.

The Consultant shall comply with the affirmative action clause prescribe in 41 C.F.R. Section 60-250.4(a) through (m) and the regulations contained in part 60-250.

ATTACHMENT E

Instructions to Offerors for Non-Construction (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 and 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 F

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 G

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

General Conditions for Non-Construction Contracts

Section I – (With or without 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. 01/31/2014)

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-5370-C 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 I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) 'Authority or Housing Authority (HA)' means the Housing Authority.
- (b) 'Contract' means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) 'Contractor' means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) 'Day' means calendar days, unless otherwise stated.
- (e) 'HUD' means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

-
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
 - (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (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 this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the 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 Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work) Office of Labor Relations

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 01/31/2014)

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:
 - ⓐ 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).

- ① 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

Form of Non-Collusive Affidavit

FORM OF NON-COLLUSIVE AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS

_____, being first duly sworn, deposes and says that he is

(a partner or officer of the firm of, etc.)

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 _____, 2013

Notary Public

My Commission expires: _____

ATTACHMENT I

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 J

Declaration (Required Submission)

DECLARATION - (REQUIRED SUBMITTAL)

NAME

TITLE

CITY, STATE

SUBMITTAL DATE

The undersigned, as Offeror, declares that the only persons interested in this Response are named herein, that no other person has any interest in this proposal, that this proposal is made without connection or arrangement with any other person, and that this proposal is in every respect fair, in good faith, and without collusion or fraud.

The Offeror further declares that he/she has complied in every respect with all of the instructions of Offerors, and has read all addenda, if any, has satisfied himself or herself fully relative to all matters and conditions with respect to the proposal.

The Offeror agrees, if this proposal is accepted, to execute such agreement as appropriate for the purpose of establishing a formal contractual relationship between the Offeror and the HCHA for the performance of all requirements to which the proposal pertains.

The Offeror states that this proposal is based upon the proposal documents and amendments, if any.

Persons Interested in this Response:

Name	Identity of Interest
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1. _____	
----------	--

2. _____	
----------	--

3. _____	
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NAME OF FIRM/INDIVIDUAL/CORPORATION

SIGNATURE/TITLE

ATTACHMENT K

Section 3 Policy

Harris County Housing Authority
Section 3 Policy

STATEMENT OF PURPOSE

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, is to "ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed toward low-and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low-and very low-income persons." The 1992 Act sets forth:

- The types of HUD financial assistance, activities, and recipients subject to the requirements of Section 3;
- The specific individuals and business concerns who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and
- The order of priority in which these individuals and business concerns should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

The Harris Housing Authority's Section 3 Policy is expressed in this statement, the goal statement, and the preference tiers. Implementation procedures may be amended periodically to insure that the policy requirements are being met or to bring about efficiencies in the implementation of the program based on the practice and experience of running the program.

*Note that supply and delivery contracts are exempted from these Section 3 Policy requirements.

HARRIS COUNTY HOUSING AUTHORITY PREFERENCE TIERS

Harris County Housing Authority's preference is to ensure that as many housing authority residents as possible are employed. In an effort to further that goal, the Authority has created the following preference tier structure. Vendors are asked to comply with Section 3 by first considering Category I, hiring at the site where work is being performed. If the vendor demonstrates to the Authority's satisfaction the inability to hire at the site, the Authority's next preference is for the vendor to hire residents from other Authority properties and/or programs (Category II). If the vendor cannot meet its Section 3 goal in this manner and needs to move to other categories, the vendor must document this inability to comply with the preference.

I. Preference for Section 3 Residents in Training and Employment Opportunities

Category I Train/hire residents from the site where the work is being performed

Category II Train/hire residents of other housing developments and/or programs managed by the housing authority that is expending the covered assistance

Category III Train/hire participants in a HUD Youthbuild-like program being carried out in the metropolitan area or Non-metropolitan County in which the covered assistance is expended

Category IV Train/hire other Section 3 residents

II. Preference for Section 3 Business Concerns in Contracting Opportunities

Category I Businesses

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3 covered assistance is expended and whose full-time permanent workforce includes 30 percent of these persons as employees (or 30% of persons who were Section 3 residents within 3 years of their first employment)

Category II Businesses

Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the housing authority that is expending the Section 3 covered assistance and whose full-time, permanent workforce includes 30 percent of these persons as employees (or 30% of persons who were Section 3 residents within 3 years of their first employment)

Category III Businesses

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3 covered assistance is expended

Category IV Businesses

Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the housing authority that is expending the Section 3 covered assistance

Category V Businesses

HUD Youthbuild-like programs being carried out in the metropolitan area in which the Section 3 covered assistance is expended

Category VI Businesses

Business concerns that are 51 percent or more owned by Section 3 residents and:

- i. whose permanent, full-time workforce includes no less than 30 percent Section 3 residents; or
- ii. that subcontract 20 percent or more of the total amount of the contract (including modifications) and subcontracts 25 percent of the subcontracted amount to Section 3 business concerns

Category VII Businesses

Business concerns that are 51 percent or more owned by Section 3 residents

NOTE: For contracts or purchase orders \$100,000 or less, other economic opportunities can be identified without regard for the Harris County Housing Authority's preference requirements.

SECTION 3 COMPLIANCE REQUIREMENTS

Hiring

A. Background

1. The Section 3 regulations provide that recipients, their contractors, and any subcontractors demonstrate compliance by employing Section 3 residents as 5% of the aggregate number of new hires.

2. The Section 3 Regulations, at CFR Part 135, require that in affordable housing programs, compliance efforts shall be directed to provide training and employment opportunities to Section 3 residents in accordance with the HCHA preference tier structure.
3. If a new hire is needed and a Section 3 resident is identified, that Section 3 resident will be required to submit evidence of Section 3 status to the recipient, contractor or subcontractor.
4. The Harris County Housing Authority requires a preference for hiring from the development where work is being performed. However, the Harris County Housing Authority will not require a vendor to hire from the development at the site if:
 - a. A pre-identified list of Section 3 residents from a job site contains no persons qualified to perform the work. Qualified residents from other developments shall then be considered.
 - b. The vendor's workforce is adequate to do the job and no new hiring is needed. In the event that no new hires are needed, vendors must pursue other avenues of compliance as set forth in the Harris County Housing Authority's preference tier structure.

B. Compliance

1. As part of each bid or proposal submitted, the respondent must document their workforce by position. Such information will be re-verified at the commencement of the contract.
2. Vendors will be required to submit documentation in the form of payroll forms submitted weekly that clearly identify the Section 3 hires. The vendor must comply with the Section 3 requirement throughout the life of the contract. Harris County Housing will periodically audit this information. Failure to comply with the weekly submittal of payroll shall result in the delay of payment.
3. Harris County Housing Authority residents by virtue of their income are Section 3 residents. Contractors employing Harris County Housing Authority residents must retain documentation that demonstrates any Harris County Housing Authority residents hired to meet Section 3 employment goals are:
 - a. identified on the lease of household, that is lease compliant; and
 - b. able to provide to the contractor or subcontractor the client number for the household where Harris County Housing Authority residency is claimed. This client number must appear on the certified payrolls submitted by the vendor to verify a Section 3 hire.
4. Non-Harris County Housing Authority households claiming Section 3 status must be prepared to submit evidence of income and residency in Harris County at the time of hire. As part of the Section 3 compliance process, vendors will be required to document that employees hired meet the residency and income requirements.

Contracting

A. Background

1. The Section 3 Regulations, at 24 CFR Part 135, provide that the Harris County Housing Authority, its contractors and subcontractors may demonstrate compliance by awarding contracts to Section 3 business concerns or to vendors who contract with such firms.
2. Harris County Housing Authority's contracting goals require that Section 3 firms receive at least:
 - a. 10 percent of the total dollar of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing; or
 - b. 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
 - c. 3 percent of the total dollar amount of all other Section 3 covered contracts.
3. Goals apply to the entire amount of Section 3 covered assistance awarded to a recipient in any federal fiscal year (FFY), October 1- September 30. Correspondingly, Harris County Housing Authority's goals shall apply to the total dollar amount of each contract or purchase order.

4. Recipients that award contracts to contractors that will provide training or hiring, must ensure that contractors provide training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns.
5. Efforts shall be directed to award contracts to Section 3 business concerns according to HCHA preference categories.

B. Compliance

1. Business concerns claiming Section 3 status based on ownership and workforce or workforce only (as applicable) must meet that status at the time the bid or proposal is submitted to the Harris County Housing Authority.
2. Anyone claiming to be a Section 3 resident or business concern shall be required, as set forth by procedure, to provide evidence of such status.
3. Pursuant to 24 CFR 135.36 (c) any firm, prime or subcontractor claiming Section 3 status must demonstrate to the Authority's satisfaction that the business concern is responsible and has the ability to complete the work under the terms and conditions of the proposed contract. In evaluating firms under this provision the Authority will examine:
 - a. the work history and prior performance of the firm;
 - b. the requirements of the job verses the skills evidenced by the firm through its owners, officers, principals, and key staff;
 - c. technical and logistical capacity to complete the work considering contracts already awarded to the firm by the Authority or others;
 - d. bonding capacity and ability to obtain required insurance (with allowances for disadvantaged or startup firms);
 - e. evidence of past sanctions imposed by the Authority or others; and
 - f. evidence that the firm, its principals, associates, partners, subcontractors or others have not acted or colluded in order to circumvent the compliance process by structuring contractual or other relationships or engaging in practices designed to comply with Section 3 only to obtain the preference without regard to the work requirements of the job.
4. A business concern need not hire to be considered a Section 3 business provided that:
 - a. the business concern is 51 % or more owned by a Section 3 resident; or
 - b. the business concern's workforce consists of sufficient numbers of Section 3 residents to qualify the vendor as a Section 3 business (30% or more of the full-time workforce consists of Section 3 residents, or persons who were Section 3 residents within 3 years of first employment); or
 - c. the business concern subcontracts 20% or more of the total amount of the contract (including modifications) and in turn subcontracts 25% of the subcontracted amount to Section 3 business concerns (25% of 20%); or
5. After award of a contract, if a business concern must hire to maintain the Section 3 workforce percentage, new hiring efforts must be made in accordance with the Harris County Housing Authority preference tier for hiring (Category I).
6. If a business concern claims Section 3 status by virtue of workforce composition, documentation of the 30% workforce requirement must be submitted to the Authority as part of the response to the bid, quote, or proposal. Further, the firm must maintain the Section 3 workforce percentage throughout the life of the contract. Workforce composition is subject to audit.
7. A business concern (including joint-ventures) seeking to qualify for a Section 3 preference shall certify and submit evidence that they are entitled to the applicable Section 3 preference and that they are a Section 3 business concern as defined in 24 CFR, Part 135 and by the Harris County Housing Authority pursuant to this policy. Prime or subcontractors must submit documentation (including workforce composition data) as part of any bid, quote, or proposal submitted to the Harris County Housing Authority. Additional documentation is required for joint-ventures.

8. Firms that claim Section 3 business status by subcontracting (25% of 20%) of the total contract) to other Section 3 businesses must require that the subcontractor(s) provide ownership or workforce documentation as applicable. The prime contractors must keep such records on file and available for review by the Authority. Such documentation must also be submitted as part of any bid, quote or proposal.
9. Subcontractors identified by any prime contractor claiming Section 3 status per item 6 must be a Section 3 business by ownership and/or workforce as defined in this policy. Subcontractors used by prime contractors to comply with item 6 cannot claim Section 3 status by further subcontracting.
10. Section 3 Joint-Ventures - to meet Section 3 contracting goals the Authority is permitted to contract with an association of firms as least one of which meets the Authority's definition of a Section 3 business concern. A definition of a joint venture is provided in the definition section of this policy. Compliance requirements for joint-ventures are discussed below.
11. Joint-Ventures are subject to the following documentation requirements:
 - a. The joint-venture agreement must be in writing and must be submitted as part of the response to any bid or proposal solicited by the Harris County Housing Authority. In order for the Authority to evaluate the "adequacy" and "capacity", the agreement must describe in sufficient detail the area(s) of work assigned to each member of the joint-venture.
 - b. The joint-venture agreement must reference a completed and fully executed joint-venture certification, as provided by the Authority, which must also be attached to the joint-venture agreement as an exhibit.
 - c. The Harris County Housing Authority requires that the Section 3 joint-venture partner is a bona-fide Section 3 business; therefore, the joint-venture shall provide documentation that shows that the Section 3 partner meets the ownership and workforce, or workforce requirements established in this policy. Section 3 joint-venture partners cannot use subcontracting to establish their status as a Section 3 business concern.
 - d. Section 3 requires that the joint-venture partner be responsible for a clearly defined portion of the work. Proposals or bids must specify the labor hours assigned to and the compensation to be received by the Section 3 joint-venture firm.
 - e. Section 3 firms in the joint-venture must be qualified to perform the scope of work and have the capacity to complete the work assigned under the joint-venture agreement (see item b above).

Bid or Proposal Evaluation

- A. Vendors who fail to address Section 3 requirements will be deemed nonresponsive. This means that in the proposal or bid documents submitted to the Harris County Housing Authority, the Contractor's Affidavit and Compliance commitment must be completed including applicable attachments and supporting documentation to support claims of compliance by hiring, contracting, or other economic opportunities.
- B. After written notice from the Harris County Housing Authority specifying the defects in the Section 3 information, vendors will be given no more than 5 business days to complete the form and provide all required documents. Failure to respond within the 5 days will result in the Authority declaring the bidder or respondent non-responsive. The contract or bid will then be awarded to the next lowest bidder or to the respondent with the next highest score. Where the selection is a qualifications-based procurement, the Harris County Housing Authority will award to the firm that is the next highest ranked.

DEFINITIONS

NEW HIRES- Persons selected to fill full-time, temporary or seasonal employment opportunities.

RESIDENT OWNED BUSINESS (ROB)- A ROB is a business concern owned or controlled by affordable housing residents, that is: (a) at least 51 % owned by one or more affordable housing residents; and (b) whose management and daily business operations are controlled by one or more such individuals. For the purpose of Section 3 compliance, a ROB must also meet the Housing Authority's definitions of a Section 3 business concern as described below.

EMPLOYMENT OPPORTUNITIES GENERATED BY SECTION 3 COVERED ASSISTANCE- All employment opportunities generated by the expenditure of Section 3 covered PIH assistance (i.e. operating assistance, development assistance, and modernization assistance) and with respect to Section 3 covered housing and community development assistance, all employment opportunities arising in connection with Section 3 covered projects, including management and administrative jobs (including architectural, engineering, or related professional services and jobs directly related to administrative support of these activities) connected with the Section 3 covered project.

RECIPIENT- Any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian Tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee, or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

SECTION 3- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

SECTION 3 BUSINESS CONCERN- As defined by the Harris County Housing Authority, a Section 3 business concern is one:

- A. That is fifty-one (51 %) or more owned by Section 3 residents; or
- B. Whose full-time employees includes persons, at least 30 percent of whom are current Section 3 residents, or were Section 3 residents within three (3) years of the date of first employment with the business concern; or
- C. That provides evidence of a commitment to: (1) subcontract 25 percent or more of the total amount of the contract (including any modification); and (2) in turn subcontracts in excess of 25 percent of the amount from (1) to Section 3 business concerns as defined in A or B (25% of 20%).

Example: If the contract amount is \$1,000,000, vendor must subcontract at least 20% or \$200,000. Of the \$200,000, 25% or \$50,000 must go to Section 3 business concern(s) as defined in A or B.

SECTION 3 CLAUSE- The contract provisions and sanction set forth in 24 CFR 135.8.

SECTION 3 COVERED ACTIVITY- Any activity that is funded by Section 3 covered assistance including Affordable housing assistance.

SECTION 3 COVERED ASSISTANCE- There are no dollar amount thresholds for PIH (Public and Indian Housing) funded Section 3 covered activities. Section 3 applies to all contractors and

subcontractors performing work in connection with the following assistance regardless of the amount of the contract or subcontract:

- Public and Indian housing development assistance provided pursuant to Section 5 of the 1937 Act;
- Public and Indian housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- Public and Indian housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
- Section 8 assistance for work arising in connection with; housing rehabilitation, housing construction, or other public construction projects.

SECTION 3 COVERED CONTRACT- A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts for the purchase of supplies and materials except, whenever a contract for materials includes the installation of the materials, the contract constitutes a "Section 3 covered contract."

SECTION 3 COVERED PROJECT- The construction, reconstruction, conversion, or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

SECTION 3 JOINT VENTURE- An association of business concerns, one of which qualifies as a Section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 business concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

SECTION 3 RESIDENT-

- A. An affordable housing resident or
- B. An individual who resides in Harris County and who meets the following criteria:
 - i. Low-income persons-families (or single persons) whose incomes do not exceed 80 per centum of the median income for the area.
 - ii. Very low-income persons-families (or single persons) whose incomes do not exceed 50 per centum of the median income for the area.

ATTACHMENT L

Ethics Policy

HARRIS COUNTY HOUSING AUTHORITY

Ethics Policy

Effective: August 15, 2012

Last Revised: August 5, 2015

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A. PURPOSE

As a county housing authority and public corporation, the Harris County Housing Authority (“Authority”) is obligated to achieve and maintain certain standards of ethics under state law and under its Annual Contributions Contract (“ACC”) with the U. S. Department of Housing and Urban Development (“HUD”). To achieve the highest standard of ethics and propriety, the Board of Commissioners adopted and established an Ethics Policy on August 15, 2012, to describe in a single document the various obligations of the Authority prescribed by federal and state law, and its contractual obligations with HUD. The purpose of the Ethics Policy is to maintain the reputation and goodwill of the Authority in Harris County and the state of Texas by ensuring that the public and other governmental entities have confidence in the integrity, independence, and impartiality of the commissioners, officers, employees, and other contractors of the Authority.

B. ENFORCEMENT

The board of commissioners shall recommend to any commissioner appropriate action to remediate or resolve any conflict or violation or shall refer to the Harris County Attorney’s Office the facts and issues regarding any unresolved conflict or violation by a

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commissioner that could constitute inefficiency, neglect of duty, or misconduct in office that might justify removal of the commissioner from office. The board of commissioners shall direct the executive director to remediate or resolve any conflict or violation involving an Authority employee. The executive director may take appropriate action to remedy or resolve an employee conflict or violation, including disciplinary action under the Employee Handbook.

C. ETHICS POLICY

All commissioners and employees shall abide by the provisions of Texas State law and the HUD ACC contained in the Sources of Law and Policy section below. To the extent allowed by federal or state law or the HUD ACC, the following rules shall further regulate the conduct of commissioners and employees to avoid the appearance or risk of impropriety:

Economic Benefit

A commissioner or employee shall not take any official action that he or she knows is likely to affect the economic interest of the commissioner or employee or their immediate family; an outside client or customer; a household member; the outside employer or a parent, child or spouse; a business entity or its affiliate of the commissioner or employee or their immediate family; a person or business entity from whom the commissioner or employee, or a spouse, has, within the previous 12 months, solicited, received and not rejected, or accepted an offer of employment, or with whom the commissioner or employee, or a spouse, has engaged in negotiations pertaining to business opportunities. Any commissioner or employee shall disclose such a relationship or interest and refrain from participation in any discussion or official action in the affected matter. A commissioner who is required to refrain from participation or action under this Section shall not be counted as “absent” for purposes of making a quorum under Article III, Section 7 of the Authority’s Bylaws, because of the commissioner’s refrainment.

Unfair Participation

A commissioner or employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person, including himself or herself, any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A commissioner or employee shall not acquire an interest in, or acquire an interest affected by, any contract, transaction, decision or other matter, if the commissioner or employee knows that the interest will be affected by the impending official action by the Authority. A commissioner or employee may not enter into any agreement or understanding with any person that official action by the commissioner or employee will be rewarded or reciprocated by the other person. A commissioner or employee shall not appoint or employ, or vote to appoint or employ, any relative within the third degree of consanguinity or second degree of affinity to any office or position within the Authority. No commissioner or employee shall supervise a relative in the third degree of consanguinity or second degree of affinity. If an employee, because of marriage,

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promotion, reorganization, or otherwise, is placed into the line of supervision of a proscribed relative, one of the employees must be reassigned or other arrangements made for supervision. Any commissioner or employee shall disclose such a relationship or interest and refrain from participation in any discussion or official action in the affected matter.

Gifts

A commissioner or employee, and second degree relatives or outside business associates, shall not solicit, accept, or agree to accept any gift to benefit for himself or herself or an interested business entity that reasonably tends to influence or reward official conduct or that the commissioner or employee knows is being offered with the intent to influence or reward official conduct. A commissioner or employee shall not solicit any gift or benefit but may accept or agree to accept a non-cash gift of nominal value and meals in an individual expense of \$50 or less at any occurrence from any individual or business entity doing or seeking to do business with the Authority. However, except as provided in the sentence immediately below, such gifts may not in aggregate exceed \$250 during any 12-month period. Gifts of reasonable value related to a special occasion and the relationship between the donor and recipient, reasonable public awards, or rewards for meritorious service or professional achievement, scholarships and fellowships, admissions to events in his or her official capacity or a spouse's position, and solicitations for civic or charitable causes are excluded from this rule.

Confidential Information

A commissioner or employee shall not use his or her official position to obtain official information about any person or entity for any purpose other than in the performance of official duties. A commissioner or employee shall not intentionally, knowingly, or recklessly disclose any confidential information concerning the property, operations, policies, affairs, or tenants of the Authority excepted as permitted by the Texas Public Information Law or applicable federal law or regulation.

Representation of Private Interests

A commissioner or employee shall not represent any person, group, or entity before the Authority's board of commissioners or before staff having policy-making or decision-making responsibility. A commissioner or employee shall not assert the prestige of the commissioner's or employee's position for the purpose of advancing private interests or state, or imply that he or she is able to influence Authority action on any basis other than the merits.

Outside Employment

A commissioner or employee shall not solicit, accept, or engage in concurrent outside employment which could be reasonably expected to impair independence of judgment in or faithful performance of official duties. A commissioner or employee shall not provide services to an outside employer related to the commissioner or employee's official duties. A commissioner or employee shall disclose any outside employment to the Authority board of commissioners upon initial appointment and annually thereafter.

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Authority Property and Resources

A commissioner or employee shall not use, request, or permit the use of Authority facilities, personnel, vehicles, equipment, tools, supplies, property, or resources for personal, private, or political activities or purposes.

Political Activity

A commissioner or employee shall not induce or attempt to induce any commissioner or employee to participate in a partisan election campaign, contribute to a candidate or political action committee, or engage in any other political activity relating to a particular party, candidate, or issue, or to refrain from engaging in any lawful political activity. A commissioner or employee may encourage another to vote generally. A commissioner or employee shall not accept any compensation for services in any political activity related to any federal, state or local election for a candidate or issue.

Third-Party Actions

A commissioner or employee shall not assist or induce, or attempt to assist or induce, any person to violate any provision in the Ethics Policy. A commissioner or employee shall not circumvent the Ethics Policy through the acts of another person.

Interest in Contracts

A commissioner or employee shall not have a private or personal financial interest in any contract with the Authority or in the sale to the Authority of any land, materials, supplies, or service. A private or personal financial interest arises when a party to the contract or sale involves the commissioner or employee, or a parent, child or spouse, or a business entity in which the commissioner or employee, or a parent, child or spouse, owns 10% of the voting stock or shares, or of the fair market value of the business entity, or a business entity that is a subcontractor on an Authority contract, a partner, or a parent, or subsidiary business entity.

Disclosure, Determination, and Resolution of Conflicts and Violations

A commissioner or employee shall disclose any known conflicts of interest, proscribed relationships, or apparent or potential violations of the laws, HUD's ACC, or Ethics Policy to the board of commissioners and executive director upon initial appointment or employment and annually upon the beginning of each fiscal year. The Authority's counsel shall prepare disclosure forms, and amendments as necessary or reasonable for approval of the board of commissioners. The board of commissioners shall submit all disclosure forms to Authority counsel for review. Authority counsel shall determine whether there is any actual or potential conflict or violation of the laws, HUD's ACC, or Ethics Policy, and recommend action by the board of commissioners or executive director to resolve any conflict or violation.

Interpretation

Actions subject to the Ethics Policy shall be opined by the counsel to the Authority based on the known facts and issues and reported to the board of commissioners and executive

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director with recommended resolution of a conflict or violation of the law or general rules.

Annual Trainings

Commissioners are required to attend annual program and Board of Commissioners training to review the requirements of this Ethics Policy and their other responsibilities as Commissioners for Harris County Housing Authority.

D. SOURCES OF LAW AND POLICY

Certain Texas laws govern the ethics of commissioners and employees of housing authorities. The Ethics Policy will be amended automatically to incorporate any legislative amendments to these statutes that become law.

Texas Housing Authorities Law

The Texas Housing Authorities Law, Tex. Local Government Code, Chapter 392, includes two provisions regarding conflicts of interest affecting commissioners and employees:

Sec. 392.042. Interested Commissioners.

(a) In this section, "housing project" includes, in addition to the works or undertakings described by Subdivision (6) of Section 392.002:

- (1) a work or undertaking implemented for a reason described by Subdivision (6) of Section 392.002 that is financed in any way by public funds or tax-exempt revenue bonds; or
- (2) a building over which the housing authority has jurisdiction and of which a part is reserved for occupancy by persons who receive income or rental supplements from a governmental entity.

(b) Except as provided by Subsection (c), a commissioner of an authority may not have dealings with a housing project for pecuniary gain and may not own, acquire, or control a direct or indirect interest in a:

- (1) housing project;
- (2) property included or planned to be included in a housing project;
- (3) contract or proposed contract for the sale of land to be used for a housing project;
- (4) contract or proposed contract for the construction of a housing project; or
- (5) contract or proposed contract for the sale of materials or services to be furnished or used in connection with a housing project.

(c) A commissioner may:

- (1) manage a housing project;
- (2) own, acquire, or control a management company that renders management services to a housing project;
- (3) continue to own or control an interest in a housing project held by the commissioner before the commissioner's term of office began; or

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- (4) own, acquire, or control an interest in, or have dealings with, a housing project over which the commissioner's housing authority does not have jurisdiction.
- (d) If a commissioner manages, owns, acquires, or controls a direct or indirect interest in property included or planned to be included in a housing project or has any other dealings for pecuniary gain with a housing project, the commissioner shall immediately disclose the interest or dealings to the authority in writing. The disclosure shall be entered in the minutes of the authority. The failure to disclose the interest constitutes misconduct of office.
- (e) A commissioner who knowingly or intentionally violates Subsection (b) or (d) commits an offense. An offense under this subsection is a felony of the third degree.
- (f) A person finally convicted under Subsection (e) is ineligible for future employment with the state, a political subdivision of the state, or a public corporation formed under the authority of the state or a political subdivision of the state.

§ 392.043. Interested Employees

- (a) Except as provided by Subsection (b), (c), or (f), an employee of an authority may not have dealings with a housing project for pecuniary gain and may not own, acquire, or control a direct or indirect interest in a:
 - (1) housing project;
 - (2) property included or planned to be included in a housing project;
 - (3) contract or proposed contract for the sale of land to be used for a housing project;
 - (4) contract or proposed contract for the construction of a housing project; or
 - (5) contract or proposed contract for the sale of materials or services to be furnished or used in connection with a housing project.
- (b) An employee may not have any dealings with a housing project for pecuniary gain except in the performance of duties as an employee of the housing authority.
- (c) Except as otherwise permitted by this chapter or another law, an employee of an authority may not be employed by or otherwise contract to provide services to another authority unless the first authority gives its written consent to the employment or contract. An employee of an authority who is employed by or who contracts to provide services to another authority under this subsection does not violate Subsection (a) or (b).
- (d) An employee who knowingly or intentionally violates Subsection (a) or (c) commits an offense. An offense under this subsection is a felony of the third degree.
- (e) A person finally convicted under Subsection (d) is ineligible for future employment with the state, a political subdivision of the state, or a public corporation formed under the authority of the state or a political subdivision of the state.
- (f) An employee of an authority may be a party to or otherwise participate in a contract or agreement for assistance under a housing program, including a contract or agreement for public housing, Section 8 housing assistance, low-interest home loans, lease-purchase assistance, or down payment assistance, to the same extent as a member of the public if the employee qualifies for assistance under the program.
- (g) In this section, "Section 8 housing assistance" means housing assistance provided under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

Local Public Official Conflict of Interest

HARRIS COUNTY HOUSING AUTHORITY

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The Texas Government Code, Chapter 171, establishes conflict of interest boundaries for local public officials. Those applicable to housing authority commissioners and officers are included below:

§ 171.001. Definitions

In this chapter:

- (1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.
- (2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

§ 171.002. Substantial Interest in Business Entity

- (a) For purposes of this chapter, a person has a substantial interest in a business entity if:
 - (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
 - (2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
- (b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- (c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

§ 171.003. Prohibited Acts; Penalty

- (a) A local public official commits an offense if the official knowingly:
 - (1) violates Section 171.004;
 - (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or
 - (3) acts as surety on any official bond required of an officer of the governmental entity.
- (b) An offense under this section is a Class A misdemeanor.

§ 171.004. Affidavit and Abstention From Voting Required

- (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:
 - (1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

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(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

§ 171.005. Voting on Budget

(a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

- (1) the member has complied with this chapter; and
- (2) the matter in which the member is concerned has been resolved.

§ 171.006. Effect of Violation of Chapter

The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

§ 171.007. Common Law Preempted; Cumulative of Municipal Provisions

(a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

§ 171.009. Service on Board of Corporation for No Compensation

It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Texas Nepotism Law

The Texas Nepotism Law, Texas Government Code, Chapter 573, limits the relationships of a public official to employees and candidates for public positions:

§ 573.001. Definitions

In this chapter:

- (1) "Candidate" has the meaning assigned by Section 251.001, Election Code.
- (2) "Position" includes an office, clerkship, employment, or duty.
- (3) "Public official" means:

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- (A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;
- (B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or
- (C) a judge of a court created by or under a statute of this state.

§ 573.002. Degrees of Relationship

Except as provided by Section 573.043, this chapter applies to relationships within the third degree by consanguinity or within the second degree by affinity.

SUBCHAPTER B. RELATIONSHIPS BY CONSANGUINITY OR BY AFFINITY

§ 573.021. Method of Computing Degree of Relationship

The degree of a relationship is computed by the civil law method.

§ 573.022. Determination of Consanguinity

- (a) Two individuals are related to each other by consanguinity if:
 - (1) one is a descendant of the other; or
 - (2) they share a common ancestor.
- (b) An adopted child is considered to be a child of the adoptive parent for this purpose.

§ 573.023. Computation of Degree of Consanguinity

- (a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.
- (b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:
 - (1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and
 - (2) the number of generations between the relative and the nearest common ancestor.
- (c) An individual's relatives within the third degree by consanguinity are the individual's:
 - (1) parent or child (relatives in the first degree);
 - (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and
 - (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

§ 573.024. Determination of Affinity

- (a) Two individuals are related to each other by affinity if:
 - (1) they are married to each other; or
 - (2) the spouse of one of the individuals is related by consanguinity to the other individual.

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(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(c) Subsection (b) applies to a member of the board of trustees of or an officer of a school district only until the youngest child of the marriage reaches the age of 21 years.

§ 573.025. Computation of Degree of Affinity

(a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are:

- (1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and
- (2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).

SUBCHAPTER C. NEPOTISM PROHIBITIONS

§ 573.041. Prohibition Applicable to Public Official

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

- (1) the individual is related to the public official within a degree described by Section 573.002; or
- (2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

§ 573.062. Continuous Employment

(a) A nepotism prohibition prescribed by Section 573.041 or by a municipal charter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

- (1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and
- (2) that prior employment of the individual is continuous for at least:
 - (A) 30 days, if the public official is appointed;
 - (B) six months, if the public official is elected at an election other than the general election for state and county officers; or
 - (C) one year, if the public official is elected at the general election for state and county officers.

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any

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deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

SUBCHAPTER E. ENFORCEMENT

§ 573.081. Removal In General

(a) An individual who violates Subchapter C or Section 573.062(b) shall be removed from the individual's position. The removal must be made in accordance with the removal provisions in the constitution of this state, if applicable. If a provision of the constitution does not govern the removal, the removal must be by a quo warranto proceeding.

(b) A removal from a position shall be made immediately and summarily by the original appointing authority if a criminal conviction against the appointee for a violation of Subchapter C or Section 573.062(b) becomes final. If the removal is not made within 30 days after the date the conviction becomes final, the individual holding the position may be removed under Subsection (a).

§ 573.082. Removal by Quo Warranto Proceeding

(a) A quo warranto proceeding under this chapter must be brought by the attorney general in a district court in Travis County or in a district court of the county in which the defendant resides.

(b) The district or county attorney of the county in which a suit is filed under this section shall assist the attorney general at the attorney general's discretion.

§ 573.083. Withholding Payment of Compensation

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.

§ 573.084. Criminal Penalty

(a) An individual commits an offense involving official misconduct if the individual violates Subchapter C or Section 573.062(b) or 573.083.

(b) An offense under this section is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000.

HUD Annual Contributions Contract

The Annual Contributions Contract (Form HUD-53012A) (ACC) between HUD and the Housing Authority prohibits certain interests involving commissioners and employees:

Section 19 – Conflict of Interest

HARRIS COUNTY HOUSING AUTHORITY

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(A)(1) In addition to any other applicable conflict of interest requirements, neither the Authority nor any of its contractors or their contractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

(i) Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the Authority or a business entity.

(ii) Any employee of the Authority who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

(iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individual's immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) Any member of these classes of persons must disclose the member's interest or prospective interest to the Authority and HUD.

(3) The requirements of this subsection (A)(1) may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains.

(4) The provisions of this subsection (A) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which rates are fixed or controlled by a State or local agency.

(5) Nothing in this section shall prohibit a tenant of the Authority from serving on the governing body of the HA.

(B)(1) The Authority may not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

(i) Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the HA.

(ii) Any employee of the Authority who formulates policy or who influences decisions with respect to the project(s).

(iii) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) The prohibition referred to in subsection (B)(1) shall remain in effect throughout the class member's tenure and for one year thereafter.

(3) The class member shall disclose to the Authority and HUD the member's familial relationship to the prospective employee.

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(4) The requirements of this subsection (B)(1) may be waived by the Authority Board of Commissioners for good cause, provided such waiver is permitted by State and local law.

(C) [applies only to an Indian Housing Authority]

(D) For purposes of this section, the term “immediate family member” means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a “half” or “step” relative, e.g., a half-brother of stepchild).

ATTACHMENT M

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

PROMISSORY NOTE

(Fixed Rate)

(this "Note")

US \$3,800,000.00

June 21, 2005

FOR VALUE RECEIVED, BAYBROOK PARK RETIREMENT CENTER, LTD., a Texas limited partnership ("**Borrower**"), jointly and severally (if more than one) promises to pay to the order of AMEGY MORTGAGE COMPANY, L.L.C. d/b/a iCap Realty Advisors of Texas, a Texas limited liability company (together with any subsequent holder of this Note, the "**Lender**"), at 4576 Research Forest Drive, The Woodlands, Montgomery County, Texas 77381, 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 Eight Hundred Thousand and No/100 Dollars (US \$3,800,000.00), or so much thereof as may be advanced, with interest on the unpaid principal balance at the Stated Rate. 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.

As used in this Note, the following terms shall have the meanings set forth below:

Conversion Date: June 21, 2007 (or such earlier date that Lender has acknowledged that the conditions to Section 6.7 of the Loan Agreement have been satisfied and/or waived).

First Payment Date: August 1, 2005.

Index Rate: the rate which is or would be charged to Lender by the Federal Home Loan Bank of Dallas ("FHLB") for funds drawn therefrom under its Community Investment Program to fund or cover the Tranche B Loan on the date the Lender requests such funds from the FHLB. If the Index Rate is no longer available, Lender shall choose a new index as the Index Rate which is based upon comparable information. Lender shall give Borrower notice of such choice.

Loan Agreement: Credit Support and Disbursement Agreement of even date herewith, between Borrower and Lender, as may be modified, amended, supplemented, and restated.

Maturity Date: The Scheduled Maturity Date, or such earlier date on which the unpaid balance of this Note becomes due and payable, by acceleration or otherwise.

Scheduled Maturity Date: June 21, 2022.

Stated Rate: The Tranche A Stated Rate with respect to Tranche A Loan and the Tranche B Stated Rate with respect to the Tranche B Loan, as the case may be.

Tranche A Loan: The first \$3,650,000.00 funded under this Note.

Tranche A Stated Rate: Fixed interest rate of 6.441 % per annum.

Tranche B Loan: The \$150,000.00 funded under the Fixed Rate Note after the full funding of the Tranche A Loan.

Tranche B Stated Rate: Fixed interest rate that is 1.75% above the then applicable Index Rate.

1. **Payment of Principal and Interest.**

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

(i) Commencing on the First Payment Date, and continuing on the first day of each succeeding calendar month thereafter until and including the Conversion Date, interest only, as it accrues on the outstanding balance of this Note as provided herein, shall be due and payable;

(ii) [Intentionally Omitted]

(iii) Beginning on the first day of the first month following the Conversion 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 an amount determined by Lender to be sufficient to fully repay in equal monthly installments the outstanding principal balance of this Note as of the Conversion Date (after giving effect to the payment in (i) above) at the Stated Rate over the remaining months in a hypothetical



amortization that commences on the first day of the first calendar month following the Conversion Date and that ends three hundred sixty (360) months thereafter, 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

(iv) 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.

(b) 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.

2. 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, as 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 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 1:00 p.m. (Lender's time).

3. Security. The indebtedness evidenced by this Note (the "Indebtedness") is secured by, among other things, a deed of trust 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 pertaining to, evidencing, securing, guarantying or modifying the Indebtedness, and all extensions, renewals and modifications thereof, are collectively referred to herein as the "Other Security Documents."

4. Event of Default and Acceleration. The occurrence of an Event of Default under and as defined in the Loan Agreement shall constitute an Event of Default under and for purposes of this Note. If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the Yield Maintenance Payment (as used in this Note), 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.

5. 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 (i) 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 5 percent of such amount. 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 6.

6. **Default Rate.** Upon the occurrence of an Event of Default, interest under this Note shall accrue on the unpaid principal balance from the earlier of 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 5 percentage points above the Stated Rate or the maximum interest 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.

7. **Voluntary and Involuntary Prepayments.**

(a) on or after the date of this Note and prior to the date that is 198 months after the first day of the first calendar month following the date of this Note (the "Yield Maintenance Period"), on any payment due date, provided Borrower has given Lender at least 30 days prior notice of its intention to make such prepayment, Borrower may prepay the entire unpaid principal balance in whole (but not 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, a prepayment premium which shall be the greater of:

(i) 1.0% of the unpaid principal balance of this Note; or

(ii) the product obtained by multiplying:

(A) the amount of principal being prepaid,

by

(B) the excess (if any) of the FHLB CIP Rate over the Assumed Reinvestment Rate,

by

(C) the Present Value Factor.

For purposes of subparagraph (ii), the following definitions shall apply:

FHLB CIP Rate: one-twelfth (1/12) of the annual interest rate of 7.69100 % expressed as a decimal calculated to five digits with respect to the Tranche A Loan and one-twelfth (1/12) of the Index Rate expressed as a decimal calculated to five digits with respect to the Tranche B Loan, as the case may be.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in any other case, the date on which Lender accelerates the unpaid principal balance of the Note.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate as of the date 5 Business Days before the Prepayment Date, on the 4.43 % U.S. Treasury Security due August 2022, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security used to determine the Assumed Reinvestment Rate, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security specified above with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and term to the Treasury Security used to determine the Assumed Reinvestment Rate. The selection of an alternate security pursuant to this Paragraph shall be made in Lender's discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1-(1/1 + ARR)^n}{ARR}$$

ARR

n = number of months remaining in Yield Maintenance Period

ARR = Assumed Reinvestment Rate

8. **Costs and Expenses; Judgment Interest.** Borrower shall pay on demand all expenses and costs, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses and 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 of interest, if any, which may be charged or collected from Borrower under applicable law.

9. **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.

10. **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, appraisement, 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.

11. **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 are 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 lawful rate or the maximum lawful amount.

12. **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.

13. **Non-Recourse.**

(a) On and after the Conversion Date, except as otherwise provided in this Section 13, Borrower and its general partners shall have no personal liability under this Note, the Loan Agreement, the Security Instrument, or any Other Security Document 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 on or after the Conversion Date, 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. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower in accordance with the terms of the Loan Documents.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any 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 all security deposits collected by Borrower from tenants then in residence; (ii) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (iii) 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; (iv) fraud or written material misrepresentation by Borrower, or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by

Lender; or (v) 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 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 in any calendar year if Borrower has paid all operating expenses and 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) 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 21 of the Security Instrument.

(d) To the extent that Borrower has personal liability under this Section 13, 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 13, 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 13 shall impair the lien of the Security Instrument.

(f) Notwithstanding anything to the contrary set forth in this Note, the Security Instrument and/or any of the Other Security Documents, W. Barry Kahn and John E. Hettig shall have no obligation to pay to Lender any amounts for which Borrower is personally liable under this Note, the Security

Instrument and/or any of the Other Security Documents, including with out limitation, Paragraph 13 of this Note, with respect to matters that first commence and occur after the date that Lender, pursuant to the Assignment of Management Agreement executed and delivered in connection with the loan evidenced by this Note, (a) terminates that certain (i) Management Agreement (the "Management Agreement") between Borrower and Investors Management Group, LLC, and/or (ii) Management Agreement Subcontract (the "Subcontract"), among Investors Management Group, LLC, Hettig Management Corp. ("Hettig") and Borrower, or (b) consents to the termination of the Management Agreement and/or the Subcontract, or (c) consents to the transfer of Hettig's obligations, liabilities and responsibilities under the Management Agreement and the Subcontract.

14. **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.

15. **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.

16. **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.

17. **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 supercede 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.

18. **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.**

19. **Other Agreements.** This Note is the Fixed Rate Note under and as defined in the Loan Agreement. Subject to all the terms and conditions of the Loan Agreement, Lender agrees to loan to the Borrower, and Borrower shall have the right to borrow and obtain Advances up to the cumulative principal sum of \$3,800,000.00, such loan to be evidenced by this Note. Requests for advances hereunder (the "Advances") shall be made by Borrower in accordance with 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 Advances and 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, and no separate promissory note or other writing need be executed by Borrower to evidence the obligations of Borrower to pay the Advances. The total of cumulative Advances under this Note is limited to \$3,800,000.00 as provided for in the Loan Agreement, it being understood by Borrower that this Note is not a revolving note line, and any principal payments made hereunder may not be the subject of future Advances hereunder.

BORROWER COVENANTS AND AGREES TO ASSUME LIABILITY FOR AND TO PROTECT, INDEMNIFY AND SAVE THE LENDER HARMLESS FROM ANY AND ALL 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 WILFUL MISCONDUCT OF LENDER, OR ANY OF LENDER'S EMPLOYEES OR AGENTS.

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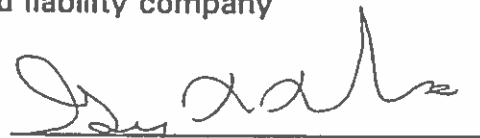
IN WITNESS WHEREOF, Borrower has signed or has caused to be signed by its duly authorized representative effective as of the date first stated above.

BORROWER:

BAYBROOK PARK RETIREMENT CENTER,
LTD., a Texas limited partnership

By: HCHA Baybrook Park, LLC, a Texas
limited liability company

By:



Guy Rankin, IV, Manager

Borrower's Social Security/Federal Employer
ID Number: 41-2127477

SUBORDINATE PROMISSORY NOTE
(Multifamily Properties)
(HOME)

\$625,000.00

Houston, Texas
June 21, 2005

1. FOR VALUE RECEIVED, **BAYBROOK PARK RETIREMENT CENTER, LTD.**, a Texas limited partnership ("**Borrower**"), promises to pay to the order of **HARRIS COUNTY HOUSING AUTHORITY** ("**Lender**"), 8410 Lantern Point Drive, Houston, TX 77054, the principal sum of SIX HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$625,000.00) or such lesser amount that Lender has advanced to Borrower, in lawful money of the United States, together with interest at an annual rate equal to the long-term applicable federal interest rate (AFR) existing as of the date hereof on the unpaid principal that is outstanding from time to time accruing from the date of each advance until August 31, 2027 (the "**Maturity Date**"). Interest shall be calculated on the basis of a year of three hundred sixty (360) days but charged on the basis of the actual number of days that the principal remains unpaid.

2. The principal of this Note and all accrued but unpaid interest thereon will be due and payable on the Maturity Date.

3. This Note may be prepaid in whole or in part at any time without premium or penalty.

4. All payments and prepayments will be applied as provided in Section 9 of the Subordinate Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date with this Note, executed by Borrower for the benefit of Lender (the "**Deed of Trust**").

5. As used in this Note, the term "**Event of Default**" will mean and include any one or more of the following events:

(a) Borrower fails to pay, when due, any amount required to be paid by Borrower pursuant to the terms of this Note or the Deed of Trust and does not make such payment within ten (10) days of Borrower's receipt of written notice thereof from Lender;

(b) Borrower fails to observe or perform any covenant, condition or agreement to be observed or performed by it under this Note or under any of the other Loan Documents (as such term is defined in the Deed of Trust) (other than with respect to any covenant, condition, or agreement that requires Borrower to make a payment and to which Section 5(a) applies), and Borrower does not cure such failure within thirty (30) days of Borrower's receipt of written notice thereof from Lender, or, if such failure cannot reasonably be cured within said 30-day period, Borrower shall have such additional reasonable period to cure such failure as Lender, in its reasonable discretion, may grant, provided that Borrower has initiated reasonable corrective actions to cure such failure during said 30-day period; and

(c) The occurrence of an Event of Default (as such term is defined in the Deed of Trust).

6. The outstanding principal balance of this Note and all accrued but unpaid interest thereon, at the option of Lender, will become immediately due and payable, without notice or demand (unless otherwise provided in any of the Loan Documents), upon the occurrence at any time of an Event of Default (although subject to the expiration of any applicable cure period).

7. Upon the sale of the Mortgaged Property (as such term is defined in the Deed of Trust), the outstanding principal balance of this Note and all accrued but unpaid interest thereon will become immediately due and payable. In addition to any other applicable provisions, including in any intercreditor agreement or similar agreement to which Lender is a party, Section 7.05 of that Amended and Restated Agreement of Limited Partnership of Borrower dated as of June 21, 2005, addresses the priority of the payment to be made on this Note upon the sale of the Mortgaged Property, and it is incorporated herein by this reference.

8. This Note is secured by the Deed of Trust. All of the terms, covenants, conditions, provisions, and agreements of the Deed of Trust are made a part of this Note to the same extent, and with the same force and effect, as if they were set forth fully in this Note.

9. Borrower promises to pay all costs of collection, including but not limited to reasonable attorneys' fees, paid or incurred by Lender on account of collection, whether suit is filed and whether incurred prior to or after entry of judgment.

10. All payments due under this Note will be made to Lender at the address first set forth above, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

11. Except as provided in Section 5, demand, presentment, protest, and notice of nonpayment and dishonor of this Note are waived.

12. This Note will be governed by and construed in accordance with the laws of the State of Texas without giving effect to the choice of law provisions of the State of Texas.

13. Borrower acknowledges that Lender has made the loan to Borrower represented by this Note for the primary purpose of accomplishing one of Lender's public purposes concerning the fostering of low-income housing.

14. Any notice to be given under this Note shall be given in the manner that is provided in the Deed of Trust.

15. The indebtedness evidenced by this Note and the other Loan Documents (collectively, the "**Indebtedness**") is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by the following:

(a) That certain Promissory Note dated June 21, 2005 in the original principal amount of \$3,800,000.00 executed by Borrower and payable to Amegy Mortgage Company, L.L.C. d/b/a iCap Realty Advisors of Texas ("**Amegy**"), and that certain Promissory Note dated June 21, 2005 in the original principal amount of \$1,900,000.00 executed by Borrower and payable to Amegy, both secured by that

certain Multifamily Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated of even date therewith, executed by Borrower for the benefit of Amegy (the "**First Lien Deed of Trust**"), to the extent and in the manner provided in that certain Intercreditor and Subordination Agreement of even date therewith, between Lender, Amegy and Borrower (the "**Subordination Agreement**").

16. The Deed of Trust is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Lien Deed of Trust, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Lender under the Subordination Agreement.

17. Borrower and Lender agree and acknowledge as follows:

(a) Lender is a party to that Agreement between Harris County and Lender for Baybrook Park Retirement Center Affordable Housing Project dated April 26, 2005 (the "**HOME Agreement**"), pursuant to which Harris County granted funds to Lender that Harris County received from the United States Government under the Home Investment Partnerships (HOME) Program (the "**HOME Funds**").

(b) Each of Lender and Borrower represents that it has read and is familiar with all of the terms and provisions of the HOME Agreement, including without limitation, all exhibits, riders and forms referenced therein and attached thereto.

(c) The HOME Agreement provides that Lender (as "Subrecipient" thereunder) (i) shall form and serve as the sole member of HCHA Baybrook, LLC, a Texas limited liability company ("**General Partner**"), which is the sole general partner of Borrower, and cause Borrower to provide and/or perform the activities described in the HOME Agreement and for which the HOME Agreement designates Borrower as the responsible party, including without limitation, those activities described in Exhibit A of the HOME Agreement; (ii) is authorized to loan the HOME Funds to Borrower so Borrower can finance the development of the Project (as such term is defined in the HOME Agreement); and (iii) agreed to perform in accordance with and pursuant to the terms of the HOME Agreement, including without limitation, terms setting forth certain construction and payment procedures, rental and tenant restrictions, affordability and property standards.

18. Lender, as "Subrecipient" under the HOME Agreement, hereby agrees to abide by the terms and provisions of the HOME Agreement that are identified as "Subrecipient's" duties and responsibilities thereunder (individually, "**Subrecipient's Obligation**" and collectively, "**Subrecipient's Obligations**"), and to take all actions necessary to ensure that it receives a reimbursement of eligible expenses, as provided in the HOME Agreement, on or before June 30, 2006.

19. Notwithstanding the foregoing Section 18, to the extent that Lender's compliance with and/or performance of any Subrecipient's Obligation is dependent upon Borrower's substantive compliance with and/or compliance with such Subrecipient's Obligation, Borrower hereby agrees, as appropriate and applicable, to (a) take such actions, in a timely manner, that are necessary to allow Lender to comply with and/or perform such

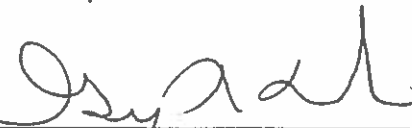
Subrecipient's Obligation; (b) refrain from taking any actions that would cause Lender to fail to so comply and/or perform; and/or (c) comply with and/or perform any such Subrecipient's Obligation that, as ground lessee, should be performed by Borrower. With respect to Subsection 19(b) above, and by way of example and not exclusion, since Borrower is or shall be the ground lessee of the Project and therefore have control over the development and operation of the Project, Borrower shall be responsible for satisfying all of the Subrecipient's Obligations that are of the type and/or character that would typically be the responsibility of the owner or the ground lessee of projects similar in type to the Project, including without limitation, Subrecipient's Obligations related to the construction of improvements, the maintenance of affordability standards, and the compliance with applicable governmental rules and regulations, and Lender agrees cooperate with Borrower and permit Borrower to do so. Without limiting the foregoing, to the extent any actions under the HOME Agreement requires interaction with Harris County, Lender agrees to do so timely and in accordance with the terms and provisions of the HOME Agreement, including without limitation, timely facilitating Borrower's receipt of reimbursement of eligible expenses as provided in the HOME Agreement.

20. Each of Lender and Borrower shall advise the other, both orally and in writing, promptly upon becoming aware of and/or receiving notice of (a) a default under the HOME Agreement, and/or (b) any event that, with the giving of notice, the lapse of time, the happening of any other or future condition, event or act, or any combination thereof, would constitute a default under the HOME Agreement, and will cooperate and use good faith efforts, Individually and in combination with the other, to promptly and timely take such actions as are necessary to avoid and/or cure any such default (as applicable).

Executed to be effective as of the date first set forth above.

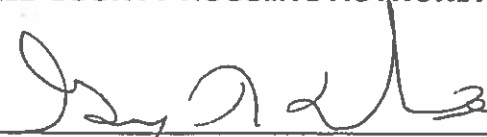
BAYBROOK PARK RETIREMENT CENTER, LTD.,
a Texas limited partnership

By: HCA Baybrook Park, LLC,
a Texas limited liability company,
its general partner

By: 
Guy Rankin IV, its Manager

Harris County Housing Authority hereby executes this Note to acknowledge its agreement with the terms and provisions of Sections 17 – 20 hereof.

HARRIS COUNTY HOUSING AUTHORITY

By: 
Guy Rankin, IV, Executive Director

ATTACHMENT N

Multi-family Leasehold Deed of Trust and Letter Loan Agreement

**SUBORDINATE MULTIFAMILY LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS SUBORDINATE MULTIFAMILY LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument") is dated as of the 21st day of June, 2005, and executed by Baybrook Park Retirement Center, Ltd., a limited partnership organized and existing under the laws of Texas, as trustor ("Borrower"), to Guy Rankin, IV, as trustee ("Trustee"), for the benefit of Harris County Housing Authority, organized and existing under the laws of the State of Texas, as beneficiary ("Lender").

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Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in Harris County, State of Texas and described in Exhibit A attached to this Instrument. To have and to hold the Mortgaged Property unto Trustee, Trustee's successor in trust and Trustee's assigns forever.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Subordinate Promissory Note payable to Lender, dated as of the date of this Instrument, and maturing as set therein set forth, in the principal amount of \$625,000.00 (the "Note"), and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower warrants and represents that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for the Permitted Exceptions (as hereinafter defined). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements, restrictions, senior liens and other matters that affect the Mortgaged Property and are recorded in the Real Property Records of Harris County, Texas (the "Permitted Exceptions").

Covenants. Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.**

The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "**Borrower**" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(b) "**Collateral Agreement**" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(c) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(d) **"Event of Default"** means the occurrence of any event listed in Section 22.

(e) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(f) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(g) **"Ground Lease"** means Borrower's leasehold estate as created in that certain Ground Lease dated as of June 21, 2005, executed by Borrower, as the ground lessee, and Lender, as the ground lessor.

(h) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(i) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the

Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs

(j) **"HOME Agreement"** means that Agreement between Harris County and Lender for Baybrook Park Retirement Center Affordable Housing Project dated April 26, 2005, executed by Harris County and Lender, as such may be amended from time to time, which sets forth, among other things, certain restrictions, requirements and obligations pertaining to the funding of the loan evidenced by the Note and the development and construction of the Mortgaged Property, and the terms and provisions of which are incorporated herein by this reference as if such terms and conditions were fully set forth in this Instrument.

(k) **"Impositions" and "Imposition Deposits"** are defined in Section 7(a).

(l) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(m) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument.

(n) **"Land"** means the land described in Exhibit A.

(o) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(p) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(q) **"Limited Partners"** means Hudson SLP LLC, Hudson Baybrook LLC and Investors Affordable Housing Group V, LLC, and the successors and/or assigns of each.

(r) **"Loan Documents"** means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, and any other documents now or in the future executed by Borrower in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(s) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) Borrower's leasehold estate in and to the Land pursuant to the Ground Lease;
- (2) The Improvements;
- (3) The Fixtures;

(4) The Personality;

(5) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(6) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(7) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) All Rents and Leases;

(11) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(12) All Imposition Deposits;

(13) All refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(14) All tenant security deposits which have not been forfeited by any tenant under any Lease; and

(15) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(16) All appurtenances in respect of or otherwise relating to the Ground Lease, including, without limitation, renewal option and expansion rights, and all estate and rights of Borrower of, in and to (i) all modifications, extensions and renewals of the Ground Lease and all rights to renew or extend the term thereof, (ii) all credits to and deposits of Borrower under the Ground Lease; (iii) all other options, privileges and rights granted and demised to Borrower under the Ground Lease, (iv) all of the right and privilege of Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Ground Lease, and (v) any and all possessory rights of Borrower and other rights or privileges of possession;

(17) All of Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Ground Lease by Lender, as the ground lessor, or any trustee, custodian or receiver appointed pursuant to the Bankruptcy Code in the event there shall be filed by or against Lender, as the ground lessor, any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect; and

(t) **"Note"** means the Subordinate Promissory Note described on Page 1 of this Instrument, and all schedules, riders, allonges and addenda thereto, as such Subordinate Promissory Note may be amended from time to time.

(u) **"O&M Program"** is defined in Section 18(a).

(v) **"Personalty"** means all equipment, inventory, general intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(w) **"Property Jurisdiction"** is defined in Section 30(a).

(x) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(y) **"Senior Lender"** means Amegy Mortgage Company, L.L.C. d/b/a iCap Realty Advisors of Texas, together with its successors and assigns, all as described in Section 52.

(2) "Senior Loan Documents" means, collectively, the First Lien Loan Documents, as the same may be amended from time to time, all as described in Section 52.

(aa) "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any Governmental Authority, and which, if not paid, will become a lien on the Land or the Improvements..

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral, subject to the rights of Senior Lender. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents, subject to the rights of Senior Lender. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) At such times as an Event of Default then exists, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to Lender. However, unless an Event of Default has occurred and is continuing, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. At such times as an Event of Default then exists, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid, subject to the rights of Senior Lender. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At such times as an Event of Default then exists, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender; provided, however, that the giving of any such notice by Lender shall not affect, in any way, Lender's entitlement to the Rents as of the date on which the Event of Default occurs. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts that are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than (i) an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note or (ii) an assignment of Rents in connection with any Senior Loan Documents, as hereinafter defined), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its reasonable discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing

for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its reasonable discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. **ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY,**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease, subject to the rights of Senior Lender. It is the intention of Borrower to establish a present, absolute and

irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases, subject to the rights of Senior Lender. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(r). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Unless an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. At such times as an Event of Default then exists, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) At such times as an Event of Default then exists, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement, neither of which shall be unreasonably delayed, withheld or conditioned. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender, such consent not to be unreasonably delayed, withheld or conditioned. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, and for so long as such Event of Default continues, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. **PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; NO PREPAYMENT PREMIUM.**

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall have the right to prepay all or any portion of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, in whole or in part without premium.

6. **INTENTIONALLY DELETED.**

7. **DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.**

(a) Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the

premiums for fire and other hazard insurance, rent loss insurance and such other insurance required under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "Imposition Deposits". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "Impositions". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower provided, however, that any requirement to make Imposition Deposits shall be deemed met if similar deposits are made with a Senior Lender.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Instrument and the other Loan Documents, subject to the rights of Senior Lender. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in

full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS.

Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of Improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used or is intended to be used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of reasonable fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

Upon reasonable notice to Borrower, Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection upon reasonable notice at any reasonable time by Lender.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that Lender holds sufficient Imposition Deposits for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender (or with a Senior Lender) reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

16. LIENS; ENCUMBRANCES.

Other than the lien of this Instrument and as evidenced by the Senior Loan Documents and liens for ad valorem taxes not yet delinquent, Borrower shall not the grant or permit the creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance on the Mortgaged Property or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the

Mortgaged Property by a residential rental property manager satisfactory to Lender (in Lender's reasonable discretion and judgment) under a contract approved by Lender in writing, and (6) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

(b) Borrower will perform all of the obligations of the ground lessee in accordance with the terms of the Ground Lease. Borrower will not enter into any agreement or take any action that could terminate, surrender, modify or amend the Ground Lease without the prior written consent of Lender, which shall not be unreasonably delayed, withheld or conditioned, and any termination, surrender, modification or amendment in violation hereof will be void. Borrower will notify Lender promptly upon learning of any condition that, with or without the passage of time or the giving of any notice, might result in the termination of the Ground Lease. Borrower will promptly deliver to Lender any notices of default or other notices that the ground lessor under the Ground Lease gives Borrower, even if the ground lessor under the Ground Lease is also obligated to send copies to Lender. If Borrower acquires fee title to the Land, this Instrument will apply to the fee title, but Borrower's fee and leasehold estates will not merge, and in such event, Lender or Trustee may enforce this Instrument as to the fee estate, the leasehold estate or both.

(c) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Instrument, Borrower intends to change the management of the Mortgaged Property, Lender shall have the right to approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(d) Borrower will perform all of its obligations as set forth in the HOME Agreement. Borrower will not enter into any agreement or take any action that could terminate, surrender, modify or amend the HOME Agreement without the prior written consent of Lender, which shall not be unreasonably delayed, withheld or conditioned, and any termination, surrender, modification or amendment will be void. Borrower will notify Lender

promptly upon learning of any condition that, with or without the passage of time or the giving of any notice, might result in the termination of the HOME Agreement. Borrower will promptly deliver to Lender any notices of default or other notices that Borrower receives under the HOME Agreement. Disbursements of the proceeds of the loan evidenced by the Note shall be made in accordance with the terms and provisions of the HOME Agreement.

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "O&M Program") or matters described in Section 18(b), Borrower shall not cause or knowingly permit any of the following:

(1) The presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

(2) The transportation of any Hazardous Materials to, from, or across the Mortgaged Property;

(3) Any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(4) Any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower shall pay the costs of performing its obligations upon demand by Lender. Any such reasonable out-of-pocket costs of Lender that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

(1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(2) To the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;

(3) Except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(5) No event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;

(6) There are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) Any representation or warranty in this Section 18 becomes untrue after the date of this Instrument.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure or following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the reasonable fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender; provided, however, promptly upon its receipt thereof, Lender shall make available to Borrower such written results and any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Subject to the terms of Section 40, Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount that a party may bid at such sale. Provided Lender complies with Section 40, Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials

Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) any prior loan servicer, (iv) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (v) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

(1) Any breach of any representation or warranty of Borrower in this Section 18;

(2) Any failure by Borrower to perform any of its obligations under this Section 18 after notice and opportunity to cure;

(3) The existence or alleged existence (provided such is alleged by a party other than an Indemnitee) of any Prohibited Activity or Condition;

(4) The presence or alleged presence (provided such is alleged by a party other than an Indemnitee) of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and

(5) The actual or alleged violation (provided such is alleged by a party other than an Indemnitee) of any Hazardous Materials Law.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at Borrower's expense (such expenses to be reasonable in nature and amount).

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its reasonable discretion.

(m) Lender agrees that the indemnity under this Section 18 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are general partners of Borrower.

(n) Borrower shall, at its own cost and expense, do all of the following:

(1) Pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnites in any legal or administrative proceeding incident to any matters against which Indemnites are entitled to be Indemnified under this Section 18;

(2) Reimburse Indemnites for any reasonable expenses paid or incurred in connection with any matters against which Indemnites are entitled to be indemnified under this Section 18; and

(3) Reimburse Indemnites for any and all reasonable expenses, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnites of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all reasonable costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the reasonable fees and out-of-pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnites under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnites under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender, in its reasonable discretion, so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any building is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such building against loss by flood.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 15 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may, in its reasonable discretion, from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may, in its reasonable discretion, from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give prompt written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's reasonable expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (2) apply the balance of such proceeds to the payment of

the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Notwithstanding anything in this Instrument and/or the other Loan Documents to the contrary, Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness unless the Senior Lender is doing so.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Subject to the rights of Senior Lender, Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's reasonable expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. INTENTIONALLY DELETED.

22. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) Any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document, and such failure continues for a period of ten (10) days following Lender's delivery to Borrower of written notice thereof;

(b) Borrower fails to observe or perform any covenant, condition or agreement to be observed or performed by it under this Instrument or under any of the other Loan

Documents (other than with respect to any covenant, condition, or agreement that requires Borrower to make a payment and to which Section 22(a) applies), and Borrower does not cure such failure within thirty (30) days of Borrower's receipt of written notice thereof from Lender, or, if such failure cannot reasonably be cured within said 30-day period, Borrower shall have such additional reasonable period to cure such failure as Lender, in its reasonable discretion, may grant, provided that Borrower has initiated reasonable corrective actions to cure such failure during said 30-day period;

(c) Borrower receives notice of a default (which shall include the expiration of all applicable notice and cure periods) in connection with the Ground Lease, the HOME Agreement and/or any of the Senior Loan Documents; and

(d) Any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

Notwithstanding anything to the contrary set forth in this Instrument or in any of the other Loan Documents, the Limited Partners shall have rights equivalent to Borrower in connection with the right to receive notice and cure any such failures, defaults and/or Events of Default (however defined) under this Instrument and under the other Loan Documents, and by acceptance of this Instrument, Lender agrees to simultaneously deliver to each of the Limited Partners all notices delivered to Borrower under this Instrument and/or the other Loan Documents, and to accept any curative actions of the Limited Partners. No cure period provided in this Instrument and/or any of the other Loan Documents shall commence until notice is delivered to each of the applicable parties listed on Schedule 1 in accordance with this Section 22.

23. REMEDIES CUMULATIVE.

Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not

be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness 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 on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. **INTENTIONALLY DELETED.**

26. **INTENTIONALLY DELETED.**

27. **WAIVER OF MARSHALLING.**

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

28. **FURTHER ASSURANCES.**

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may, in its reasonable discretion, require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

29. **ESTOPPEL CERTIFICATE.**

Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the

enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

30. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "Property Jurisdiction").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. **NOTICE.**

(a) All notices, demands and other communications ("notice") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in Schedule 1, attached hereto and made a part hereof, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party listed on Schedule 1 may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by any other party listed on Schedule 1 and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under this Instrument, the Note and/or any other Loan Document that does not specify how notices are to be given shall be given in accordance with this Section 31.

32. **SALE OF NOTE.**

The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower; provided, Lender agrees to give Borrower notice of any such sale promptly upon the closing thereof.

33. **INTENTIONALLY DELETED.**

34. **SUCCESSORS AND ASSIGNS BOUND.**

This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower.

35. **JOINT AND SEVERAL LIABILITY.**

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document.

37. **SEVERABILITY; AMENDMENTS.**

The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

38. **CONSTRUCTION.**

The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

39. **INTENTIONALLY DELETED.**

40. **DISCLOSURE OF INFORMATION.**

Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including [HUD, Harris County], trustees, master servicers, special servicers, rating agencies, and organizations maintaining

databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property, such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Loan Documents, whether or not the lien evidenced thereby is released.

43. ACCELERATION; REMEDIES.

At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Texas law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that Lender may exercise the power of sale granted in this Instrument without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction. Such sale shall be made at the courthouse door of the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any Personalty present at such sale) on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m., after advertising the time, place and terms of sale and that portion of the Mortgaged Property to be sold by posting or causing to be posted written or printed notice of sale at least twenty-one (21) days before the date of the sale at the courthouse door of the county in which the sale is to be made and at the courthouse door of any other county in which a portion of the Land may be situated, and by filing such notice with the County Clerk(s) of the county(s) in which all or a portion of the Land may be situated, which notice may be posted and filed by the Trustee acting, or by any person acting for the Trustee, and Lender has, at least twenty-one (21) days before the date of the sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the Indebtedness according to Lender's records by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent

address as shown by Lender's records, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be *prima facie* evidence of the fact of service.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold in fee simple with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Mortgaged Property against all claims and demands. The recitals in Trustee's deed shall be *prima facie* evidence of the truth of the statements contained in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable Trustee's fees and attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess.

If all or any part of the Mortgaged Property is sold pursuant to this Section 43, Borrower will be divested of any and all interest and claim to the Mortgaged Property, including any interest or claim to all insurance policies, utility deposits, bonds, loan commitments and other intangible property included as a part of the Mortgaged Property. Additionally, after a sale of all or any part of the Land, Improvements, Fixtures and Personalty, Borrower will be considered a tenant at sufferance of the purchaser of the same, and the purchaser shall be entitled to immediate possession of such property. If Borrower shall fail to promptly vacate the Mortgaged Property, the purchaser may and shall have the right, without further notice to Borrower, to go into any justice court in any precinct or county in which the Mortgaged Property is located and file an action in forcible entry and detainer, which action shall lie against Borrower or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have under this Instrument or otherwise.

In any action for a deficiency after a foreclosure under this Instrument, if any person against whom recovery is sought requests the court in which the action is pending to determine the fair market value of the Mortgaged Property, as of the date of the foreclosure sale, the following shall be the basis of the court's determination of fair market value:

(a) the Mortgaged Property shall be valued "as is" and in its condition as of the date of foreclosure, and no assumption of increased value because of post-foreclosure repairs, refurbishment, restorations or improvements shall be made;

(b) any adverse effect on the marketability of title because of the foreclosure or because of any other title condition not existing as of the date of this Instrument shall be considered;

(c) the valuation of the Mortgaged Property shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash within a six month-period after foreclosure;

(d) although the Mortgaged Property may be disposed of more quickly by the foreclosure purchaser, the gross valuation of the Mortgaged Property as of the date of foreclosure shall be discounted for a hypothetical reasonable holding period (not to exceed 6

months) at a monthly rate equal to the average monthly interest rate on the Note for the twelve months before the date of foreclosure;

(e) the gross valuation of the Mortgaged Property as of the date of foreclosure shall be further discounted and reduced by reasonable estimated costs of disposition, including brokerage commissions, title policy premiums, environmental assessment and clean-up costs, tax and assessment, prorations, costs to comply with legal requirements and attorneys' fees;

(f) expert opinion testimony shall be considered only from a licensed appraiser certified by the State of Texas and, to the extent permitted under Texas law, a member of the Appraisal Institute, having at least five years' experience in appraising property similar to the Mortgaged Property in the county where the Mortgaged Property is located, and who has conducted and prepared a complete written appraisal of the Mortgaged Property taking into considerations the factors set forth in this Instrument; no expert opinion testimony shall be considered without such written appraisal;

(g) evidence of comparable sales shall be considered only if also included in the expert opinion testimony and written appraisal referred to in the preceding paragraph; and

(h) an affidavit executed by Lender to the effect that the foreclosure bid accepted by Trustee was equal to or greater than the value of the Mortgaged Property determined by Lender based upon the factors and methods set forth in subparagraphs (a) through (g) above before the foreclosure shall constitute *prima facie* evidence that the foreclosure bid was equal to or greater than the fair market value of the Mortgaged Property on the foreclosure date.

Lender may, at Lender's option, comply with these provisions in the manner permitted or required by Title 5, Section 51.002 of the Texas Property Code (relating to the sale of real estate) or by Chapter 9 of the Texas Business and Commerce Code (relating to the sale of collateral after default by a debtor), as those titles and chapters now exist or may be amended or succeeded in the future, or by any other present or future articles or enactments relating to same subject. Unless expressly excluded, the Mortgaged Property shall include Rents collected before a foreclosure sale, but attributable to the period following the foreclosure sale, and Borrower shall pay such Rents to the purchaser at such sale. At any such sale:

(1) whether made under the power contained in this Instrument, Section 51.002, the Texas Business and Commerce Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property (Borrower shall deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser as completely as if the property had been actually present and delivered to the purchaser at the sale;

(2) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Borrower;

(3) the recitals contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited in the Instrument, including nonpayment of the Indebtedness and the advertisement and conduct of the sale in the manner provided in this Instrument and otherwise by law and the appointment of any successor Trustee;

(4) all prerequisites to the validity of the sale shall be conclusively presumed to have been satisfied;

(5) the receipt of Trustee or of such other party or officer making the sale shall be sufficient to discharge to the purchaser or purchasers for such purchaser(s)' purchase money, and no such purchaser or purchasers, or such purchaser(s)' assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication of such purchase money;

(6) to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of Borrower's right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar to any claim to all or any part of the property sold, both at law and in equity, against Borrower and against any person claiming by, through or under Borrower; and

(7) to the extent and under such circumstances as are permitted by law, Lender may be a purchaser at any such sale.

44. RELEASE.

Upon payment of the Indebtedness, Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument.

45. TRUSTEE.

(a) Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting under this Instrument or shall fail or refuse to act in accordance with this Instrument when requested by Lender or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named in this Instrument or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the original Trustee named in this Instrument. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Lender (whether acting pursuant to a power of attorney or otherwise), and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by Lender.

(b) Any successor Trustee appointed pursuant to this Section shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Instrument; but, nevertheless, upon the written request of Lender or such

successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by the Trustee ceasing to act to the successor Trustee.

(c) Trustee may authorize one or more parties to act on Trustee's behalf to perform the ministerial functions required of Trustee under this Instrument, including the transmittal and posting of any notices.

46. INTENTIONALLY DELETED.

47. INTENTIONALLY DELETED.

48. FIXTURE FILING.

This Instrument is also a fixture filing under the Uniform Commercial Code of Texas.

49. ADDITIONAL PROVISIONS REGARDING ASSIGNMENT OF RENTS.

In no event shall the assignment of Rents or Leases in Section 3 and Section 4 cause the Indebtedness to be reduced by an amount greater than the Rents actually received by Lender and applied by Lender to the Indebtedness, whether before, during or after (i) an Event of Default, or (ii) a suspension or revocation of the license granted to Borrower in Section 3(c) with regard to the Rents. Borrower and Lender specifically intend that the assignment of Rents and Leases in Section 3 and Section 4 is not intended to result in a *pro tanto* reduction of the Indebtedness. The assignment of Rents and Leases in Section 3 and Section 4 is not intended to constitute a payment of, or with respect to, the Indebtedness and, therefore, Borrower and Lender specifically intend that the Indebtedness shall not be reduced by the value of the Rents and Leases assigned. Such reduction shall occur only if, and to the extent that, Lender actually receives Rents pursuant to Section 3 and applies such Rents to the Indebtedness. Borrower agrees that the value of the license granted with regard to the Rents equals the value of the absolute assignment of Rents to Lender. The assignment of Rents contained in Section 3 shall terminate upon the release of this Instrument.

50. LOAN CHARGES.

Borrower and Lender intend at all times to comply with the laws of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount payable under the Note, this Instrument or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if acceleration of the maturity of the Indebtedness, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender shall be applied to reduce the unpaid principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of the Note, this Instrument and the other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the Loan Documents reduced, without the necessity of the

execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. The right to accelerate the maturity of the 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 collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding any provision contained in the Note, this Instrument or any other Loan Document that permits the compounding of interest, including any provision by which any accrued interest is added to the principal amount of the Indebtedness, the total amount of interest that Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness shall not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Instrument or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

51. **PROPERTY AND LIABILITY INSURANCE — DELIVERY OF POLICY TO LENDER.**

Notwithstanding the provisions of Section 19(b), Borrower shall not be required to deliver the original (or a duplicate original) of any renewal policy of insurance to Lender more than 15 days prior to the expiration date of the policy then held by Lender.

52. **PRIOR ENCUMBRANCES.**

(a) The Indebtedness is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by the following:

(1) That certain Promissory Note dated June 21, 2005, in the original principal amount of \$3,800,000.00, executed by Borrower and payable to Amegy Mortgage Company, L.L.C. d/b/a iCap Realty Advisors of Texas ("Amegy"), and that certain Promissory Note, dated June 21, 2005, in the original principal amount of \$1,900,000.00 executed by Borrower to Amegy (collectively the "First Lien Notes"), both as secured by that certain Multifamily Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated of even date therewith, executed by Borrower for the benefit of Amegy (the "First Lien Deed of Trust"), to the extent and in the manner provided in that certain Intercreditor and Subordination Agreement dated as of even date therewith, between Lender, Amegy and Borrower (the "Subordination Agreement").

(b) This Instrument is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Lien Deed of Trust, as more fully set forth in the Subordination Agreement, and all other instruments evidencing, governing and/or securing the First Lien Notes (collectively, the "First Lien Loan Documents"). The rights and remedies of the payee and each subsequent holder of the Note under this Instrument are subject to the restrictions and limitations set forth in the Subordination Agreement and the other Senior Loan Documents. Each subsequent holder of the Note shall be deemed, by

virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

(c) In addition to all other warranties and representations made by Borrower, Borrower warrants and represents that all payments currently due under the Senior Loan Documents have been paid, no notice of any default under any of the Senior Loan Documents which remains uncured has been given by a holder thereof and there exists no fact or circumstance which constitutes a default or event of default under the Senior Loan Documents which would entitle the holder of any indebtedness secured thereby to accelerate such indebtedness.

(d) In addition to all other covenants made by Borrower, Borrower hereby covenants and agrees with Lender that it shall: (a) timely pay all amounts due and timely perform all of its obligations, under the Senior Loan Documents; and (b) furnish to Lender a copy of any notice given to Borrower pursuant to any of the Senior Loan Documents, whether concerning a default thereunder or otherwise, within three (3) days after receipt thereof by Borrower. Lender shall have the right (but not the obligation) to pay any amount due under the Senior Loan Documents or to expend any sums necessary to cure a default (or potential default) thereunder and Borrower shall reimburse Lender for any amounts so expended upon demand therefor, together with interest at the Default Rate from the date of demand until paid and such amounts shall be a part of the Indebtedness secured hereby.

(e) Notwithstanding the other provisions hereof dealing with the use and application of the proceeds of insurance or condemnation, the rights of Lender hereunder to apply such proceeds to the Indebtedness or to hold same for the Restoration of the Mortgaged Property shall be subject to the rights, if any, of the holder or holders of any of the Senior Loan Documents to use such proceeds to pay the Indebtedness secured thereby or to restore the Mortgaged Property, provided that the provisions of this Instrument governing such proceeds shall apply to such proceeds in excess of the amount thereof so applied or used by the holder of any of the Senior Loan Documents.

(f) The amount which Borrower is required to escrow with Lender as Imposition Deposits shall be reduced by an amount equal to any amounts which Borrower actually maintains on deposit from time to time pursuant to an equivalent provision in any of the Senior Loan Documents.

(g) The occurrence of a default or event of default, including the giving of notice and the passage of any applicable cure periods without cure, under the Senior Loan Documents shall be an Event of Default hereunder without any further notice from Lender; provided, however, that the remedies of Lender hereunder shall be subject to the remedies of the holder or holders of the Prior Note.

53. ENTIRE AGREEMENT.

THIS INSTRUMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

54. **INTENTIONALLY DELETED.**

55. **EXTENDED LOW-INCOME HOUSING COMMITMENT.**

Lender agrees that the lien of this Instrument shall be subordinate to (a) any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Mortgaged Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code; and (b) any land use restriction agreement recorded against the Mortgaged Property in connection with HOME Agreement, provided that such land use restriction agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure.

56. **REMOVAL OF GENERAL PARTNER.**

The removal and/or replacement of a general partner of Borrower shall not be deemed a default or Event of Default under this Instrument and the other Loan Documents provided such removal and/or replacement is done in accordance with the terms and provisions of Borrower's partnership agreement.

ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

<input checked="" type="checkbox"/>	Exhibit A	Description of the Land (required)
<input checked="" type="checkbox"/>	Schedule 1	Addresses for Notice

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

Baybrook Park Retirement Center, Ltd.,
a Texas limited partnership

20R

By: HCHA Baybrook Park, LLC,
a Texas limited liability company,
its general partner

By: *Guy Rankin IV*
Guy Rankin IV, Manager

STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this the 21st day of June, 2005, by Guy Rankin IV, Manager of HCHA Baybrook Park, LLC, a Texas limited liability company, general partner of Baybrook Park Retirement Center, Ltd., a Texas limited partnership, on behalf of said partnership.

Kat Martin

Notary Public in and for the State of Texas

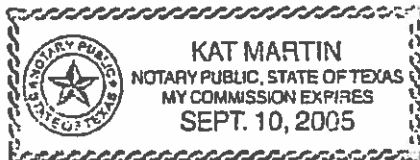


EXHIBIT A

**DESCRIPTION OF A 5.556 ACRE TRACT OF LAND SITUATED IN
THE ROBERT WILSON SURVEY, ABSTRACT NO. 88
CITY OF WEBSTER, HARRIS COUNTY, TEXAS**

A 5.556 acre tract of land, being all of Restricted Reserve "A" of BAYBROOK PARK RETIREMENT CENTER, in the Robert Wilson Survey Abstract 88, City of Webster, Harris County, Texas, according to the map or plat thereof recorded under Clerk's File No. 576150 of the Harris County Map Records (H.C.M.R.), said 5.556 acre tract being more particularly described by metes and bounds as follows:

Bearing orientation is based on the plat of BAYBROOK PARK RETIREMENT CENTER, a subdivision recorded under Film Code Number 576150 of the Harris County Map Records.

BEGINNING at a 5/8-inch iron rod capped "Terra Surveying" found for corner, said corner being the northeast corner of said Restricted Reserve "A", and the southeast corner of Reserve A-1, as shown on the Replat of Restricted Reserve "A", Block 1, Baybrook Park, Section Two (2), as recorded under said Clerk's File No. 400089 of the H.C.M.R. and being in the western right-of-way line of Texas Avenue (60-foot wide) as shown on said plat;

THENCE, in a southwesterly direction, 60.13 feet along the arc of a curve to the left having a radius of 1000.00 feet, a delta angle of $03^{\circ} 26' 42''$ and whose chord bears $S 26^{\circ} 47' 50'' W$, 60.12 feet to a 5/8-inch Iron rod with cap stamped "Brown & Gay" set for corner in the western right-of-way of said Texas Avenue;

THENCE, $N 66^{\circ} 47' 22'' W$, parallel to north line of said Restricted Reserve "A-2", a distance of 332.30 feet to a 5/8-inch Iron rod with cap stamped "Brown & Gay" set for corner;

THENCE, $S 23^{\circ} 12' 38'' W$, a distance of 137.88 feet to a 5/8-inch Iron rod with cap stamped "Brown & Gay" set for corner;

THENCE, $S 41^{\circ} 09' 44'' E$, a distance of 44.80 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for corner;

THENCE, N 41° 09' 44" W, a distance of 105.62 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" set for corner;

THENCE, N 23° 12' 38" E, a distance of 783.52 feet to a 5/8-inch iron rod found for corner;

THENCE, S 66° 47' 22" E, along the north line of said Restricted Reserve "A", a distance of 684.45 feet to the **PLACE OF BEGINNING** and containing 5.556 acres of land.

SCHEDULE 1
ADDRESSES FOR NOTICE

If to Lender:

Harris County Housing Authority
8410 Lantern Point Drive
Houston, Texas 77054
Attention: Guy Rankin, IV, Executive Director
Fax No.: 713.578.2200

If to Borrower:

Baybrook Park Retirement Center, Ltd.
c/o HCHA Baybrook Park, LLC
8410 Lantern Point Drive
Houston, Texas 77054
Attention: Guy Rankin, IV, Manager
Fax No.: 713.578.2200

And in all cases, with simultaneous copies to each of:

Winstead Sechrest & Minick P.C.
910 Travis Street, Suite 2400
Houston, Texas 77002
Attention: James Lemond
Fax No.: 713.650.2400

Harris County Community and Economic Development Department
8410 Lantern Point Drive
Houston, Texas 77054
Attention: Director
Fax No.: 713.578.2090

Hudson SPL LLC
630 5th Avenue, 23rd Floor
New York, NY 10111
Attn: Joseph A. Macari
Fax: 212.218.4467

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, LEASE, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number Sequence on the
date and at the time stamped hereon by me: and was duly RECORDED in the
Official Public Record of the County of Harris County, Texas on

JUN 22 2005



Bessie L. Keyman
COUNTY CLERK
HARRIS COUNTY, TEXAS

ATTACHMENT O

Financial Statements for Fiscal Years 2017, 2018, 2019, 2020

Baybrook Park Retirement Center, Ltd.

**Financial Statements
(With Supplementary Information)
and Independent Auditor's Report**

December 31, 2018

Cornerstone Village Apartments, L.P.

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Independent Auditor's Report

To the Partners
Baybrook Park Retirement Center, Ltd.

Report on the Financial Statements

We have audited the accompanying financial statements of Baybrook Park Retirement Center, Ltd., which comprise the balance sheet as of December 31, 2018, and the related statements of operations, partners' equity (deficit) and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Baybrook Park Retirement Center, Ltd. as of December 31, 2018, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Supplementary Information

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying supplementary information on pages 16 through 17 is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.



Atlanta, Georgia
June 3, 2019

Baybrook Park Retirement Center, Ltd.

**Balance Sheet
December 31, 2018**

Assets

Current assets	
Cash	\$ 68,114
Prepaid expenses	<u>17,017</u>
Total current assets	<u>85,131</u>
Restricted deposits and funded reserves	
Tenant security deposits	28,833
Replacement reserve	134,828
Real estate tax and insurance escrow	36,657
Operating deficit reserve	<u>235,329</u>
Total restricted deposits and funded reserves	<u>435,647</u>
Rental property	
Buildings and improvement	5,137,146
Land improvements	1,556,649
Furniture and equipment	<u>974,923</u>
	7,668,718
Accumulated depreciation	<u>(3,842,493)</u>
Total rental property	<u>3,826,225</u>
Other assets	
Other intangibles, net	7,727
Other assets, net	530
Prepaid ground lease, net	<u>471,766</u>
Total other assets	<u>480,023</u>
Total assets	<u><u>\$ 4,827,026</u></u>

Baybrook Park Retirement Center, Ltd.

**Balance Sheet
December 31, 2018**

Liabilities and Partners' Equity (Deficit)

Current liabilities	
Accounts payable	\$ 25,051
Accrued expenses	2,121
Property management fee payable	3,630
Current maturities of long-term debt - first mortgage	<u>75,424</u>
Total current liabilities	<u>106,226</u>
Deposits and prepaid liability	
Tenant security deposits	28,833
Prepaid rent	<u>1,128</u>
Total deposits and prepaid liability	<u>29,961</u>
Long-term liabilities	
Mortgages payable - first mortgage net of current maturities	2,618,140
Mortgages payable - other mortgages	625,000
Accrued interest payable - other mortgages - noncurrent	362,310
Payable to limited partners	<u>1,000</u>
Total long-term liabilities	<u>3,606,450</u>
Commitments	-
Partners' equity (deficit)	<u>1,084,389</u>
Total liabilities and partners' equity (deficit)	<u><u>\$ 4,827,026</u></u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

**Statement of Operations
Year Ended December 31, 2018**

Revenue	
Rental income	\$ 929,196
Vacancies and concessions	(29,593)
Other operating income	<u>7,141</u>
Total revenue	<u>906,744</u>
Operating expenses	
Salaries and employee benefits	164,695
Repairs and maintenance	166,397
Utilities	57,330
Property management fee	45,376
Property insurance	45,460
Miscellaneous operating expenses	<u>59,488</u>
Total operating expenses	<u>538,746</u>
Net operating income (loss)	<u>367,998</u>
Other income (expense)	
Interest income	2,317
Interest expense - first mortgage	(187,584)
Interest expense - other loans	(28,563)
Other financial income (expense)	(2,000)
Miscellaneous other income (expense)	(10,160)
Annual fee to affiliate of limited partners	(6,313)
Other related party fees and expenses	(96,000)
Depreciation	(232,821)
Amortization	<u>(2,943)</u>
Total other income (expense)	<u>(564,067)</u>
Net loss	<u><u>\$ (196,069)</u></u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Statement of Partners' Equity (Deficit)
Year Ended December 31, 2018

	<u>General Partner</u>	<u>Limited Partners</u>	<u>Total partners' equity (deficit)</u>
Balance, January 1, 2018	\$ (210)	\$ 1,335,668	\$ 1,335,458
Net loss	(20)	(196,049)	(196,069)
Capital distributions	-	(15,100)	(15,100)
Preferred return	<u>(31,920)</u>	<u>(7,980)</u>	<u>(39,900)</u>
Balance, December 31, 2018	<u>\$ (32,150)</u>	<u>\$ 1,116,539</u>	<u>\$ 1,084,389</u>
Partners' percentage of partnership losses	<u>0.01%</u>	<u>99.99%</u>	<u>100.00%</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Statement of Cash Flows
Year Ended December 31, 2018

Cash flows from operating activities	
Net loss	\$(196,069)
Adjustments to reconcile net loss to net cash provided by operating	
Depreciation	232,821
Amortization	2,943
Amortization of debt issuance costs	7,448
Land lease amortization	9,160
Changes in:	
Tenant accounts receivable	22
Prepaid expenses	(5,448)
Accounts payable	15,953
Accrued expenses	201
Property management fee payable	(182)
Accrued interest payable - other mortgages	28,563
Tenant security deposits	(14)
Prepaid rent	620
Payable to limited partners	<u>(1,000)</u>
Net cash provided by operating activities	<u>95,018</u>
Cash flows from investing activities	
Expenditures on rental property	(24,988)
Change in real estate tax and insurance escrows	9,472
Change in reserve for replacements	(1,265)
Change in operating deficit reserves	<u>(1,943)</u>
Net cash used in investing activities	<u>(18,724)</u>
Cash flows from financing activities	
Principal payments on mortgage payable	(71,060)
Distributions to partners	<u>(55,000)</u>
Net cash used in financing activities	<u>(126,060)</u>
Net decrease in cash	(49,766)
Cash, beginning	<u>117,880</u>
Cash, end	<u><u>\$ 68,114</u></u>
Supplemental disclosure of cash flow information	
Cash paid for interest	<u><u>\$ 180,136</u></u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2018

Note 1 - Organization and nature of operations

Baybrook Park Retirement Center, Ltd. (the "Partnership") was organized under the laws of the State of Texas as a limited partnership on February 23, 2004. On June 21, 2005, the Partnership agreement was amended and restated. The Partnership's purpose is to invest in real estate and the construction, operation and sale or leasing of the Partnership property. The Partnership's property consists of a 100-unit low-income apartment complex in Webster, Texas. The project is known as Baybrook Retirement Center (the "Project").

The general partner is HCHA Baybrook Park, LLC (the General Partner). The limited partners (the Limited Partners) are Investors Affordable Housing Group V, Ltd. (the Class A Limited Partner), Hudson SLP, LLC (the Special Limited Partner) and Hudson Baybrook, LLC (the Investment Limited Partner). The Partnership will operate until December 31, 2079, or until its earlier dissolution or termination.

The terms of the Partnership agreement provide, among other things, that profits, losses and tax credits are shared 99.99 percent by the limited partners and .01 percent by the general partner.

Note 2 - Significant accounting policies

Basis of accounting

The financial statements of the Partnership are prepared on the accrual basis of accounting and in accordance with accounting principles generally accepted in the United States of America.

Accounts receivable and bad debts

Tenant receivables are charged to bad debt expense when they are determined to be uncollectible based upon a periodic review of the accounts by management. Accounting principles generally accepted in the United States of America require that the allowance method be used to recognize bad debts; however, the effect of using the direct write-off method is not materially different from the results that would have been obtained under the allowance method.

Rental property

Rental property is recorded at cost. Depreciation is provided for in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives (40 years for buildings and improvements, 15 years for land improvements, and 7 or 5 years for furniture and equipment) using the straight-line method. Improvements are capitalized, while expenditures for maintenance and repairs are charged to expense as incurred. Upon disposal of depreciable property, the appropriate property accounts are reduced by the related costs and accumulated depreciation. Any resulting gains and losses are reflected in the statement of operations.

Estimated service lives are as follows:

Buildings and improvements	40 years
Land improvements	15 years
Furniture and equipment	5-7 years

Impairment of long-lived assets

In accordance with the accounting guidance for impairment or disposal of long-lived assets, the Partnership reviews its rental property for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. When recovery is reviewed, if the undiscounted cash flows estimated to be generated by the property are less than

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2018

its carrying amount, management compares the carrying amount of the property to its fair value in order to determine whether an impairment loss has occurred. The amount of the impairment loss is equal to the excess of the asset's carrying value over its estimated fair value. No impairment loss has been recognized during the year ended December 31, 2018.

Amortization

Tax credit monitoring fees are being amortized over the compliance period of the tax credits, other intangibles are being amortized over the term of the second mortgage and other assets are being amortized over the term of the interest rate cap loan. Estimated amortization expense for each of the ensuing years through December 31, 2021 is \$2,943, \$2,943, and \$1,841.

Rental revenue

Rental income is recognized as rentals become due. Rental payments received in advance are deferred until earned. All leases between the Partnership and the tenants of the property are operating leases.

Debt issuance costs

Debt issuance costs, net of accumulated amortization, are reported as a direct deduction from the face amount of the mortgage loan payable to which such costs relate. Amortization of debt issuance costs is reported as a component of interest expense and is computed using an imputed interest rate on the related loan.

Income taxes

The Partnership has elected to be treated as a pass-through entity for income tax purposes and, as such, is not subject to income taxes. Rather, all items of taxable income, deductions and tax credits are passed through to and are reported by its owners on their respective income tax returns. The Partnership's federal tax status as a pass-through entity is based on its legal status as a partnership. Accordingly, the Partnership is not required to take any tax positions in order to qualify as a pass-through entity. The Partnership is required to file and does file tax returns with the Internal Revenue Service and other taxing authorities. Accordingly, these financial statements do not reflect a provision for income taxes and the Partnership has no other tax positions which must be considered for disclosure. Income tax returns filed by the Partnership are subject to examination by the Internal Revenue Service for a period of three years. While no income tax returns are currently being examined by the Internal Revenue Service, tax years since 2015 remain open.

Use of estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

Advertising

Advertising costs are charged to operations when incurred.

Reclassifications

Certain items from the prior year financial statements have been reclassified to conform to the current year presentation.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2018

Note 3 - Restricted deposits and funded reserves

Operating reserve

Pursuant to the partnership agreement, the Partnership was required to establish an operating reserve account to fund any operating deficits. The sum of \$175,000 from the proceeds of the third capital installment and from the proceeds of the fourth capital installment shall be initially deposited into the reserve. The funds may be released to pay operating expenses with the approval of the special limited partner. As of December 31, 2018, the balance of the operating reserve was \$235,329.

Security deposits

Security deposits are deposited into the operating account and are generally held until termination of the leases, at which time some or all of the deposits may be returned to the lessees. As of December 31, 2018, the tenant security deposit balance was \$28,833.

Insurance escrow

In accordance with the loan agreement, the property is required to make monthly deposits to the insurance escrow. Funds accumulated in this account are utilized to pay for the annual liability and property insurance bills. As of December 31, 2018, the balance of this account was \$36,657.

Replacement reserve

Pursuant to the partnership agreement, the Partnership is required to make monthly deposits equal to \$250 per apartment unit, of which \$50 is required to be paid with funds from net cash available. The deposits to the replacement reserve are to be increased annually by changes in the consumer price index. Monthly deposits are placed into an interest-bearing account held by the Lender for major repairs and improvements of the Project. As of December 31, 2018, the balance of the replacement reserve was \$134,828.

Balance, January 1	\$	133,563
Deposits		25,004
Interest earnings		373
Withdrawals		(24,112)
		<hr/>
Balance, December 31	\$	<u>134,828</u>

Note 4 - Related party transactions

Management fee

The Project is currently managed by Investors Management Group, LLC, a related party of the Class A Limited Partner. The management agreement provides, among other things, for a management fee of 5 percent of gross effective income collected from operations, provided that 20 percent of the fee is subordinated to the payment of the Project's debt service and other operating expenses. As of December 31, 2018, \$45,376 in fees had been earned and \$3,630 remained payable.

Incentive management fee

Pursuant to the partnership agreement, the General Partner and Class A Limited Partner may receive an annual, non-cumulative incentive partnership management fee equal to 11 percent of gross effective income and payable from net cash available for distribution. For the year ended December 31, 2018, \$96,000, of incentive management fees had been earned and paid.

Baybrook Park Retirement Center, Ltd.

**Notes to Financial Statements
December 31, 2018**

Asset management fee

Pursuant to the partnership agreement and subject to the priority distributions of net cash flow, the Special Limited Partner may receive an annual cumulative asset management fee of \$5,000, adjusted for the change in the consumer price index in effect on the date of adjustment over the date in effect on the date of adjustment over the date in effect twelve months prior, for its services in monitoring the operations of the Partnership. For the year ended December 31, 2018, \$6,313 was incurred and \$- remained payable.

Note 5 - Mortgage payable and note payable

First mortgage payable

On December 14, 2007, construction financing of \$3,300,000 was converted to permanent financing for the Project from the Lender. The mortgage loan bears interest at 6.44 percent, requires monthly principal and interest payments of \$20,933 and is due and payable in 180 consecutive monthly installments of principal and interest, commencing February 2008. The loan matures on June 21, 2022. The mortgage is collateralized by the Project. For the year ended December 31, 2018, interest expense of \$187,584 was incurred, which includes amortization of debt issuance costs of \$7,448. The loan balance associated with this loan at December 31, 2018 was \$2,720,073. The accrued interest balance associated with this loan at December 31, 2018 was \$-.

Debt issuance costs, net of accumulated amortization, totaled \$26,509 as of December 31, 2018 are related to the first mortgage. Debt issuance costs on the above note are being amortized using an imputed rate of 6.85 percent.

HOME loan payable

In June 2005, the Partnership obtained a HOME loan in the total amount of \$625,000 from Harris County Housing Authority. The HOME loan accrues interest on the outstanding balance at the applicable federal interest rate in place on the date of the agreement, which was 4.57 percent. The HOME loan matures on August 31, 2027, is collateralized by the Project, and is subordinate to the mortgage. Payments of principal and unpaid interest are required at maturity. As of December 31, 2018, principal of \$625,000 was outstanding. As of December 31, 2018, accrued interest of \$362,310, was outstanding.

Future expected principal payments on the mortgage are required as follows:

	Amegy Bank	HCHA	Total
2019	\$ 75,424	\$ -	\$ 75,424
2020	80,004	-	80,004
2021	85,884	-	85,884
2022	2,478,761	-	2,478,761
2023	-	-	-
Thereafter	-	625,000	625,000
Total	<u>\$ 2,720,073</u>	<u>\$ 625,000</u>	3,345,073
Less current maturities			<u>(75,424)</u>
Net long-term portion			<u>\$ 3,269,649</u>

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2018

Note 6 - Capital contributions

Total investor limited partner capital contributions in accordance with the partnership agreement, as amended, are \$4,626,774, of which all contributions have been received at December 31, 2018.

Note 7 - Cash flow distribution

Cash flow for each fiscal year after the first (1st) anniversary of the completion date shall be distributed or applied, as applicable, within ninety (90) days after the end of each fiscal year, in the following order of priority:

- a. applied to the payment due to the Investment Partnership for any Operational Reduction amount due and owing;
- b. an amount equal to the payment due and owing toward the "Reserve Minimum Payment" equal to \$50 per unit;
- c. to fund any deficiency in the operating reserve;
- d. to the payment of any accrued and unpaid asset management fee, in an amount equal to 1% of gross effective income;
- e. until the deferred development fee has been paid in full, to the payment of the deferred development fee;
- f. if there are any outstanding operating deficit loans, until such operating deficit loans have been paid in full, to the payment of the outstanding operating deficit loans and then, to the general partner or Class A limited partner, as applicable, until there shall have been cumulative distributions in the aggregate equal to the special capital contribution, if any;
- g. any remaining amount up to 90% of net cash flow to the payment of the incentive management fee;
- h. thereafter, any remaining to the partners in accordance with their respective interests

Note 8 - Partnership guarantees

Operating deficit guaranty

Pursuant to the partnership agreement, at any time during the period beginning upon the date breakeven operations is achieved and ending on the third anniversary of such date, the General Partner must provide funds to the Partnership as is necessary to pay operating deficits. The General Partner is not obligated to provide funds in excess of \$260,000, as defined. Operating deficit loans bear no interest. As of December 31, 2018, no amounts were funded.

Note 9 - Concentration of credit risk

The Partnership maintains cash with financial institutions. The Partnership has not experienced any losses with respect to its bank balances in excess of government provided insurance. Management believes that no significant concentration of credit risk exists with respect to these balances as of December 31, 2018.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2018

Note 10 - Commitments

Ground lease

In June 2005, the Partnership entered into a 65-year ground lease with the Harris County Housing Authority, an affiliate of the general partner. The initial payment for the ground lease was \$595,427 and is recognized over the term of the lease. Under the terms of the agreement of the ground lease, the Partnership is required to make annual lease payments of \$1,000 during the first 17 years. Beginning in year 18, the annual lease payment increases to \$65,000 for the remaining term of the ground lease, with all but \$1,000 of that waived, provided that the Project is leased to tenants in accordance with all applicable low-income housing requirements. As of December 31, 2018, the prepaid ground lease was \$471,766.

The total ground lease expense for the year ended December 31, 2018 includes prepaid ground lease recognition of \$9,160 and a rent payment of \$1,000.

Future minimum rental payments for each of the next five years and in the aggregate, are:

2018	\$	1,000
2019		1,000
2020		1,000
2021		1,000
2022		1,000
Thereafter		<u>47,000</u>
	\$	<u><u>52,000</u></u>

Note 11 - Subsequent events

Events that occur after the balance sheet date but before the financial statements were available to be issued must be evaluated for recognition or disclosure. The effects of subsequent events that provide evidence about conditions that existed at the balance sheet date are recognized in the accompanying financial statements. Subsequent events which provide evidence about conditions that existed after the balance sheet date require disclosure in the accompanying notes. Management evaluated the activity of Baybrook Park Retirement Center, Ltd. through June 3, 2019 (the date the financial statements were available to be issued) and concluded that no subsequent events have occurred that would require recognition in the Financial Statements or disclosure in the Notes to the Financial Statements.

Supplementary Information

Baybrook Park Retirement Center, Ltd.

**Schedule of Certain Revenues and Expenses
Year Ended December 31, 2018**

Rental income	
Rent revenue - gross potential	\$ 906,212
Garage and parking spaces	16,013
Miscellaneous rent revenue	<u>6,971</u>
Total rental income	<u><u>\$ 929,196</u></u>
Vacancies and concessions	
Apartments vacancies	\$ 28,441
Rental concessions	<u>1,152</u>
Total vacancies and concessions	<u><u>\$ 29,593</u></u>
Other operating income	
Laundry and vending	\$ 1,380
Cable contract revenue	1,785
Pet deposits	660
Security deposit forfeitures	1,050
Late fees	1,152
Services income	515
Miscellaneous other income	<u>599</u>
Total other operating income	<u><u>\$ 7,141</u></u>
Salaries and employee benefits	
Salaries - administrative	\$ 74,587
Salaries - maintenance	48,790
Payroll taxes	17,348
Health insurance and other benefits	18,618
Workmen's compensation insurance	<u>5,352</u>
Total salaries and employee benefits	<u><u>\$ 164,695</u></u>
Repairs and maintenance	
Exterminating	\$ 6,098
Grounds	22,726
Fire protection	35,920
Security services/contract	2,264
Supplies	7,992
HVAC expense	6,946
Painting - exterior	2,060
Painting, decorating and cleaning	2,335
Pool	1,934
Repairs and maintenance - other than contracts	41,534
Repairs and maintenance - contracts	13,448
Elevator	13,047
Carpeting	8,417
Miscellaneous maintenance expenses	<u>1,676</u>
Total repairs and maintenance	<u><u>\$ 166,397</u></u>

Baybrook Park Retirement Center, Ltd.

**Schedule of Certain Revenues and Expenses
Year Ended December 31, 2018**

Utilities	
Electricity	\$ 18,244
Water	19,482
Gas	3,105
Other rent expense	6,337
Telephone	9,353
Cable	809
	<hr/>
Total utilities	<u><u>\$ 57,330</u></u>
Miscellaneous operating expenses	
Office supplies and expense	\$ 13,809
Training and travel	644
Telephone and answering service	476
Credit collection and eviction	416
Computer supplies and expense	3,572
Bad debt expense	70
Miscellaneous administrative	17,478
Advertising and newspaper	4,665
Special promotions	2,351
Legal	1,072
Audit	10,000
Other professional fees	4,885
Other taxes, licenses and insurance	50
	<hr/>
Total miscellaneous operating expenses	<u><u>\$ 59,488</u></u>
Interest expense - other loans	
Interest expense - second mortgage	<u>\$ 28,563</u>
	<hr/>
Total interest expense - other loans	<u><u>\$ 28,563</u></u>
Other financial income (expense)	
Miscellaneous financial expenses	<u>\$ (2,000)</u>
	<hr/>
Total other financial income (expense)	<u><u>\$ (2,000)</u></u>
Miscellaneous other income (expense)	
Ground lease expense	<u>\$ (10,160)</u>
	<hr/>
Total miscellaneous other income (expense)	<u><u>\$ (10,160)</u></u>
Other related party fees and expenses	
Incentive management fee	<u>\$ 96,000</u>
	<hr/>
Total other related party fees and expenses	<u><u>\$ 96,000</u></u>

See Independent Auditor's Report.

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Baybrook Park Retirement Center, Ltd.

**Financial Statements
(With Supplementary Information)
and Independent Auditor's Report**

December 31, 2019 and 2018

Baybrook Park Retirement Center, Ltd.

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Independent Auditor's Report

To the General Partner
Baybrook Park Retirement Center, Ltd.

Report on the Financial Statements

We have audited the accompanying financial statements of Baybrook Park Retirement Center, Ltd., which comprise the balance sheets as of December 31, 2019 and 2018, and the related statements of operations, partners' equity (deficit) and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Baybrook Park Retirement Center, Ltd. as of December 31, 2019 and 2018, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Supplementary Information

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying supplementary information on pages 18 and 19 is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

A handwritten signature in black ink that reads "CohnReznick LLP" in a cursive script.

Atlanta, Georgia
April 28, 2020

Baybrook Park Retirement Center, Ltd.

**Balance Sheets
December 31, 2019 and 2018**

Assets

	<u>2019</u>	<u>2018</u>
Current assets		
Cash	\$ 85,349	\$ 68,114
Tenant accounts receivable	150	-
Prepaid expenses	<u>13,776</u>	<u>17,017</u>
Total current assets	<u>99,275</u>	<u>85,131</u>
Restricted deposits and funded reserves		
Tenant security deposits	28,393	28,833
Replacement reserve	135,159	134,828
Real estate tax and insurance escrow	27,082	36,657
Operating deficit reserve	<u>238,846</u>	<u>235,329</u>
Total restricted deposits and funded reserves	<u>429,480</u>	<u>435,647</u>
Rental property		
Buildings and improvement	5,137,146	5,137,146
Land improvements	1,556,649	1,556,649
Furniture and equipment	<u>974,923</u>	<u>974,923</u>
	7,668,718	7,668,718
Accumulated depreciation	<u>(4,077,691)</u>	<u>(3,842,493)</u>
Total rental property	<u>3,591,027</u>	<u>3,826,225</u>
Other assets		
Other intangibles, net	4,784	7,727
Other assets, net	530	530
Prepaid ground lease, net	<u>462,606</u>	<u>471,766</u>
Total other assets	<u>467,920</u>	<u>480,023</u>
Total assets	<u><u>\$ 4,587,702</u></u>	<u><u>\$ 4,827,026</u></u>

Baybrook Park Retirement Center, Ltd.

Balance Sheets
December 31, 2019 and 2018

Liabilities and Partners' Equity (Deficit)

	<u>2019</u>	<u>2018</u>
Current liabilities		
Accounts payable	\$ 4,112	\$ 25,051
Accrued expenses	4,619	2,121
Property management fee payable	3,843	3,630
Current maturities of long-term debt - first mortgage	<u>80,004</u>	<u>75,424</u>
Total current liabilities	<u>92,578</u>	<u>106,226</u>
Deposits and prepaid liability		
Tenent security deposit	28,393	28,833
Prepaid rent	<u>2,480</u>	<u>1,128</u>
Total deposits and prepaid liability	<u>30,873</u>	<u>29,961</u>
Long-term liabilities		
Mortgages payable - first mortgage net of current maturities	2,545,196	2,618,140
Mortgages payable - other mortgages	625,000	625,000
Accrued interest payable - other mortgages - noncurrent	390,873	362,310
Payable to affiliate of the general partner	<u>1,000</u>	<u>1,000</u>
Total long-term liabilities	<u>3,562,069</u>	<u>3,606,450</u>
Commitments	-	-
Partners' equity (deficit)	<u>902,182</u>	<u>1,084,389</u>
Total liabilities and partners' equity (deficit)	<u>\$ 4,587,702</u>	<u>\$ 4,827,026</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Statements of Operations
Years Ended December 31, 2019 and 2018

	<u>2019</u>	<u>2018</u>
Revenue		
Rental income	\$ 952,762	\$ 929,196
Vacancies and concessions	(46,076)	(29,593)
Other operating income	<u>5,017</u>	<u>7,141</u>
Total revenue	<u>911,703</u>	<u>906,744</u>
Operating expenses		
Salaries and employee benefits	163,470	164,695
Repairs and maintenance	142,658	166,397
Utilities	61,422	57,330
Property management fee	45,596	45,376
Property insurance	50,405	45,460
Miscellaneous operating expenses	<u>64,190</u>	<u>59,488</u>
Total operating expenses	<u>527,741</u>	<u>538,746</u>
Net operating income (loss)	<u>383,962</u>	<u>367,998</u>
Other income (expense)		
Interest income	3,894	2,317
Interest expense - first mortgage	(182,831)	(187,584)
Interest expense - other loans	(28,563)	(28,563)
Other financial income (expense)	(2,000)	(2,000)
Miscellaneous other income (expense)	(10,160)	(10,160)
Annual fee to affiliate of limited partners	(6,408)	(6,313)
Other related party fees and expenses	(91,760)	(96,000)
Depreciation	(235,198)	(232,821)
Amortization	<u>(2,943)</u>	<u>(2,943)</u>
Total other income (expense)	<u>(555,969)</u>	<u>(564,067)</u>
Net loss	<u><u>\$ (172,007)</u></u>	<u><u>\$ (196,069)</u></u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

**Statements of Partners' Equity (Deficit)
Years Ended December 31, 2019 and 2018**

	<u>General Partner</u>	<u>Limited Partners</u>	<u>Total partners' equity (deficit)</u>
Balance, January 1, 2018	\$ (210)	\$ 1,335,668	\$ 1,335,458
Net loss	(20)	(196,049)	(196,069)
Distributions	-	(15,100)	(15,100)
Preferred return	<u>(31,920)</u>	<u>(7,980)</u>	<u>(39,900)</u>
Balance, December 31, 2018	(32,150)	1,116,539	1,084,389
Net loss	(17)	(171,990)	(172,007)
Distributions	<u>-</u>	<u>(10,200)</u>	<u>(10,200)</u>
Balance, December 31, 2019	<u>\$ (32,167)</u>	<u>\$ 934,349</u>	<u>\$ 902,182</u>
Partners' percentage of partnership losses	<u>0.01%</u>	<u>99.99%</u>	<u>100.00%</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Statements of Cash Flows
Years Ended December 31, 2019 and 2018

	<u>2019</u>	<u>2018</u>
Cash flows from operating activities		
Net loss	\$ (172,007)	\$ (196,069)
Adjustments to reconcile net loss to net cash provided by		
Depreciation	235,198	232,821
Amortization	2,943	2,943
Amortization of debt issuance costs	7,477	7,448
Land lease amortization	9,160	9,160
Changes in:		
Tenant accounts receivable	(150)	22
Prepaid expenses	3,241	(5,448)
Accounts payable	(20,939)	15,953
Accrued expenses	2,498	201
Property management fee payable	213	(182)
Accrued interest payable - other mortgages	28,563	28,563
Tenant security deposits liability	(440)	262
Prepaid rent	1,352	620
Payable to affiliate of the general partner	-	(1,000)
	<u>97,109</u>	<u>95,294</u>
Net cash provided by operating activities		
Cash flows from investing activities		
Expenditures on rental property	-	(24,988)
Change in real estate tax and insurance escrows	9,575	9,472
Change in reserve for replacements	4,669	3,721
	<u>14,244</u>	<u>(11,795)</u>
Net cash provided by (used in) investing activities		
Cash flows from financing activities		
Principal payments on mortgage payable	(75,841)	(71,060)
Distributions to partners	(10,200)	(55,000)
	<u>(86,041)</u>	<u>(126,060)</u>
Net cash used in financing activities		
Net increase in cash and restricted cash	25,312	(42,561)
Cash and restricted cash, beginning	<u>352,276</u>	<u>394,837</u>
Cash and restricted cash, end	<u>\$ 377,588</u>	<u>\$ 352,276</u>
Supplemental disclosure of cash flow information		
Cash paid for interest	<u>\$ 175,354</u>	<u>\$ 180,136</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

Note 1 - Organization and nature of operations

Baybrook Park Retirement Center, Ltd. (the "Partnership") was organized under the laws of the State of Texas as a limited partnership on February 23, 2004. On June 21, 2005, the Partnership agreement was amended and restated. The Partnership's purpose is to invest in real estate and the construction, operation and sale or leasing of the Partnership property. The Partnership's property consists of a 100-unit low-income apartment complex in Webster, Texas. The project is known as Baybrook Retirement Center (the "Project").

The general partner is HCHA Baybrook Park, LLC (the General Partner). The limited partners (the Limited Partners) are Investors Affordable Housing Group V, Ltd. (the Class A Limited Partner), Hudson SLP, LLC (the Special Limited Partner) and Hudson Baybrook, LLC (the Investment Limited Partner). The Partnership will operate until December 31, 2079, or until its earlier dissolution or termination.

The terms of the Partnership agreement provide, among other things, that profits, losses and tax credits are shared 99.99 percent by the limited partners and .01 percent by the general partner.

Note 2 - Significant accounting policies

Basis of accounting

The financial statements of the Partnership are prepared on the accrual basis of accounting and in accordance with accounting principles generally accepted in the United States of America.

Accounts receivable and bad debts

Tenant receivables are charged to bad debt expense when they are determined to be uncollectible based upon a periodic review of the accounts by management. Accounting principles generally accepted in the United States of America require that the allowance method be used to recognize bad debts; however, the effect of using the direct write-off method is not materially different from the results that would have been obtained under the allowance method.

Rental property

Rental property is recorded at cost. Depreciation is provided for in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives (40 years for buildings and improvements, 15 years for land improvements, and 7 or 5 years for furniture and equipment) using the straight-line method. Improvements are capitalized, while expenditures for maintenance and repairs are charged to expense as incurred. Upon disposal of depreciable property, the appropriate property accounts are reduced by the related costs and accumulated depreciation. Any resulting gains and losses are reflected in the statement of operations.

Estimated service lives are as follows:

Buildings and improvements	40 years
Land improvements	15 years
Furniture and equipment	5-7 years

Impairment of long-lived assets

In accordance with the accounting guidance for impairment or disposal of long-lived assets, the Partnership reviews its rental property for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. When recovery is reviewed, if the undiscounted cash flows estimated to be generated by the property are less than

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

its carrying amount, management compares the carrying amount of the property to its fair value in order to determine whether an impairment loss has occurred. The amount of the impairment loss is equal to the excess of the asset's carrying value over its estimated fair value. No impairment loss has been recognized during the years ended December 31, 2019 and 2018.

Amortization

Tax credit monitoring fees are being amortized over the compliance period of the tax credits, other intangibles are being amortized over the term of the second mortgage and other assets are being amortized over the term of the interest rate cap loan. Estimated amortization expense for each of the ensuing years through December 31, 2021 is \$2,943 and \$1,841.

Rental revenue

Rental income is recognized as rentals become due. Rental payments received in advance are deferred until earned. All leases between the Partnership and the tenants of the property are operating leases.

Debt issuance costs

Debt issuance costs, net of accumulated amortization, are reported as a direct deduction from the face amount of the mortgage loan payable to which such costs relate. Amortization of debt issuance costs is reported as a component of interest expense and is computed using an imputed interest rate on the related loan.

Income taxes

The Partnership has elected to be treated as a pass-through entity for income tax purposes and, as such, is not subject to income taxes. Rather, all items of taxable income, deductions and tax credits are passed through to and are reported by its owners on their respective income tax returns. The Partnership's federal tax status as a pass-through entity is based on its legal status as a partnership. Accordingly, the Partnership is not required to take any tax positions in order to qualify as a pass-through entity. The Partnership is required to file and does file tax returns with the Internal Revenue Service and other taxing authorities. Accordingly, these financial statements do not reflect a provision for income taxes and the Partnership has no other tax positions which must be considered for disclosure. Income tax returns filed by the Partnership are subject to examination by the Internal Revenue Service for a period of three years. While no income tax returns are currently being examined by the Internal Revenue Service, tax years since 2016 remain open.

Use of estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

Advertising

Advertising costs are charged to operations when incurred.

Reclassifications

Certain items from the prior year financial statements have been reclassified to conform to the current year presentation.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

Changes in accounting principles

In May 2014, the Financial Accounting Standards Board issued Accounting Standards Update 2014-09, *Revenue from Contracts with Customers (Topic 606)* ("ASU 2014-09"). Effective January 2019, the Partnership adopted ASU 2014-09 on a retrospective basis. The modifications under ASU 2014-09 were applied to all of the Partnership's contracts with customers. No practical expedients were applied. The majority of the Partnership's revenue is derived from leases with tenants of the Property generally for terms of one year or less, which are accounted for in accordance with *Leases (Topic 840)*. Therefore, adoption of ASU 2014-09 had no impact on the recognition of rental revenue of the Property during the periods presented or on the opening balance of partners' equity (deficit) as of January 1, 2019 and 2018.

In November 2016, the Financial Accounting Standards Board issued Accounting Standards Update 2016-18 *Statement of Cash Flows (Topic 230) - Restricted Cash* ("ASU 2016-18") to address diversity in practice with respect to the cash flows presentation of changes in amounts described as restricted cash and cash equivalents. ASU 2016-18 requires a reporting entity to include amounts described as either restricted cash or restricted cash and cash equivalents (collectively referred to as "restricted cash" herein) when reconciling beginning and ending balances in its statement of cash flows. The update also amends Topic 230 to require disclosures about the nature of restricted cash and provide a reconciliation of cash, cash equivalents and restricted cash between the balance sheet and the statement of cash flows. ASU 2016-18 was adopted retrospectively during the year ended December 31, 2019. Consequently, ending cash and restricted cash as of December 31, 2018 and 2017 was increased from \$68,114 to \$352,276 and \$117,880 to \$394,837.

Note 3 - Restricted deposits and funded reserves

Operating reserve

Pursuant to the partnership agreement, the Partnership was required to establish an operating reserve account to fund any operating deficits. The sum of \$175,000 from the proceeds of the third capital installment and from the proceeds of the fourth capital installment shall be initially deposited into the reserve. The funds may be released to pay operating expenses with the approval of the special limited partner. As of December 31, 2019 and 2018, the balance of the operating reserve was \$238,846 and \$235,329.

Security deposits

Security deposits are deposited into the operating account and are generally held until termination of the leases, at which time some or all of the deposits may be returned to the lessees. As of December 31, 2019 and 2018, the tenant security deposit balance was \$28,393 and \$28,833.

Insurance escrow

In accordance with the loan agreement, the property is required to make monthly deposits to the insurance escrow. Funds accumulated in this account are utilized to pay for the annual liability and property insurance bills. As of December 31, 2019 and 2018, the balance of this account was \$27,082 and \$36,657.

Replacement reserve

Pursuant to the partnership agreement, the Partnership is required to make monthly deposits equal to \$250 per apartment unit, of which \$50 is required to be paid with funds from net cash available. The deposits to the replacement reserve are to be increased annually by changes in the consumer price index. Monthly deposits are placed into an interest-bearing account held by the lender for

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

major repairs and improvements of the Project. As of December 31, 2019 and 2018, the balance of the replacement reserve was \$135,159 and \$134,828.

	2019	2018
Balance, January 1	\$ 134,828	\$ 133,563
Deposits	25,005	25,004
Interest earnings	376	373
Withdrawals	(25,050)	(24,112)
	<u>135,159</u>	<u>134,828</u>
Balance, December 31	<u>\$ 135,159</u>	<u>\$ 134,828</u>

Note 4 - Related party transactions

Management fee

The Project is currently managed by Investors Management Group, LLC, a related party of the Class A Limited Partner. The management agreement provides, among other things, for a management fee of 5 percent of gross effective income collected from operations, provided that 20 percent of the fee is subordinated to the payment of the Project's debt service and other operating expenses. As of December 31, 2019 and 2018, \$45,596 and \$45,376 in fees had been earned and \$3,843 and \$3,630 remained payable.

Incentive management fee

Pursuant to the partnership agreement, the General Partner and Class A Limited Partner may receive an annual, non-cumulative incentive partnership management fee equal to 11 percent of gross effective income and payable from net cash available for distribution. For the years ended December 31, 2019 and 2018, \$91,760 and \$96,000, of incentive management fees had been earned and paid.

Asset management fee

Pursuant to the partnership agreement and subject to the priority distributions of net cash flow, the Special Limited Partner may receive an annual cumulative asset management fee of \$5,000, adjusted for the change in the consumer price index in effect on the date of adjustment over the date in effect on the date of adjustment over the date in effect twelve months prior, for its services in monitoring the operations of the Partnership. For the years ended December 31, 2019 and 2018, \$6,408 and \$6,313 was incurred and \$- and \$- remained payable.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

Note 5 - Statements of cash flows

The following table provides a reconciliation of cash and restricted cash reported within the balance sheets that sum to the total of the same such amounts in the statements of cash flows:

	2019	2018
Cash	\$ 85,349	\$ 68,114
Deposits held in trust - funded	28,393	28,833
Replacement reserve funds held by management	25,000	20,000
Operating deficit reserve	238,846	235,329
Total cash and restricted cash shown in statements of cash flows	<u>\$ 377,588</u>	<u>\$ 352,276</u>

The amount included in restricted cash consists of security deposits held in trust for the future benefit of tenants upon moving out of the property, replacement reserves, and operating deficit reserves as required by regulatory authority.

Note 6 - Mortgage payable and note payable

First mortgage payable

On December 14, 2007, construction financing of \$3,300,000 was converted to permanent financing for the Project from the lender. The mortgage loan bears interest at 6.44 percent, requires monthly principal and interest payments of \$20,933 and is due and payable in 180 consecutive monthly installments of principal and interest, commencing February 2008. The loan matures on June 21, 2022. The mortgage is collateralized by the Project. For the years ended December 31, 2019 and 2018, interest expense of \$182,831 and \$187,584 was incurred, which includes amortization of debt issuance costs of \$7,477 and \$7,448. The loan balance associated with this loan at December 31, 2019 and 2018 was \$2,644,232 and \$2,720,073. The accrued interest balance associated with this loan at December 31, 2019 and 2018 was \$- and \$-.

Debt issuance costs, net of accumulated amortization, totaled \$19,032 and \$26,509 as of December 31, 2019 and 2018 are related to the first mortgage. Debt issuance costs on the above note are being amortized using an imputed rate of 6.85 percent.

HOME loan payable

In June 2005, the Partnership obtained a HOME loan in the total amount of \$625,000 from Harris County Housing Authority. The HOME loan accrues interest on the outstanding balance at the applicable federal interest rate in place on the date of the agreement, which was 4.57 percent. The HOME loan matures on August 31, 2027, is collateralized by the Project, and is subordinate to the mortgage. Payments of principal and unpaid interest are required at maturity. As of December 31, 2019 and 2018, principal of \$625,000 and \$625,000 was outstanding. As of December 31, 2019 and 2018, accrued interest of \$390,873 and \$362,310 was outstanding.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

Future expected principal payments on the mortgage are required as follows:

	Amegy Bank	HCHA	Total
2020	\$ 80,004	-	\$ 80,004
2021	85,884	-	85,884
2022	2,478,761	-	2,478,761
2023	-	-	-
2024	-	-	-
Thereafter		625,000	624,583
Total	<u>\$ 2,644,232</u>	<u>\$ 625,000</u>	3,269,232
Less current maturities			<u>(80,004)</u>
Net long-term portion			<u>\$ 3,189,228</u>

Note 7 - Capital contributions

Total Investment Limited Partner capital contributions in accordance with the partnership agreement, as amended, are \$4,626,774, of which all contributions have been received as of December 31, 2019 and 2018, respectively.

Note 8 - Cash flow distribution

Cash flow for each fiscal year after the first (1st) anniversary of the completion date shall be distributed or applied, as applicable, within ninety (90) days after the end of each fiscal year, in the following order of priority:

- applied to the payment due to the Investment Partnership for any Operational Reduction amount due and owing;
- an amount equal to the payment due and owing toward the "Reserve Minimum Payment" equal to \$50 per unit;
- to fund any deficiency in the operating reserve;
- to the payment of any accrued and unpaid asset management fee, in an amount equal to 1% of gross effective income;
- until the deferred development fee has been paid in full, to the payment of the deferred development fee;
- if there are any outstanding operating deficit loans, until such operating deficit loans have been paid in full, to the payment of the outstanding operating deficit loans and then, to the general partner or Class A limited partner, as applicable, until there shall have been cumulative distributions in the aggregate equal to the special capital contribution, if any;
- any remaining amount up to 90% of net cash flow to the payment of the incentive management fee;

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

h. thereafter, any remaining to the partners in accordance with their respective interests

Note 9 - Partnership guarantees

Operating deficit guaranty

Pursuant to the partnership agreement, at any time during the period beginning upon the date breakeven operations is achieved and ending on the third anniversary of such date, the General Partner must provide funds to the Partnership as is necessary to pay operating deficits. The General Partner is not obligated to provide funds in excess of \$260,000, as defined. Operating deficit loans bear no interest. As of December 31, 2019 and 2018, no amounts were funded.

Note 10 - Concentration of credit risk

The Partnership maintains cash with financial institutions. The Partnership has not experienced any losses with respect to its bank balances in excess of government provided insurance. Management believes that no significant concentration of credit risk exists with respect to these balances as of December 31, 2019 and 2018.

Note 11 - Commitments

Ground lease

In June 2005, the Partnership entered into a 65-year ground lease with the Harris County Housing Authority, an affiliate of the General Partner. The initial payment for the ground lease was \$595,427 and is recognized over the term of the lease. Under the terms of the agreement of the ground lease, the Partnership is required to make annual lease payments of \$1,000 during the first 17 years. Beginning in year 18, the annual lease payment increases to \$65,000 for the remaining term of the ground lease, with all but \$1,000 of that waived, provided that the Project is leased to tenants in accordance with all applicable low-income housing requirements. As of December 31, 2019 and 2018, the prepaid ground lease was \$462,606 and \$471,766.

The total ground lease expense for the years ended December 31, 2019 and 2018 includes prepaid ground lease recognition of \$9,160 and \$9,160 and a rent payment of \$1,000 and \$1,000. As of December 31, 2019 and 2018, lease payable of \$1,000 and \$1,000, respectively, remain outstanding.

Future minimum rental payments for each of the next five years and in the aggregate, are:

2020	\$	1,000
2021		1,000
2022		1,000
2023		1,000
2024		1,000
Thereafter		<u>46,000</u>
	\$	<u><u>51,000</u></u>

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2019 and 2018

Note 12 - Litigation

The Partnership is subject to litigation from time to time arising in the ordinary course of business. These matters are frequently covered by insurance. If it has been determined that a loss is probable to occur and can be reasonably estimated, the estimated amount of the loss is recorded in the financial statements. While the resolution of these matters cannot be predicted with certainty, management currently believes the final outcome of such matters will not have a material adverse effect on the financial position or results of operations from the Partnership.

Note 13 - Subsequent events

Events that occur after the balance sheet date but before the financial statements were available to be issued must be evaluated for recognition or disclosure. The effects of subsequent events that provide evidence about conditions that existed at the balance sheet date are recognized in the accompanying financial statements. Subsequent events which provide evidence about conditions that existed after the balance sheet date require disclosure in the accompanying notes. Management evaluated the activity of Baybrook Park Retirement Center, Ltd. through April 28, 2020 (the date the financial statements were available to be issued) and concluded that no subsequent events other than the subsequent event discussed below have occurred that would require recognition in the Financial Statements or disclosure in the Notes to the Financial Statements.

The spread of the novel strain of coronavirus (COVID-19) in the first quarter of 2020 has caused significant volatility in the U.S. markets. There is significant uncertainty around the breadth and duration of business disruptions related to COVID-19, as well as its impact on the U.S. economy. The extent of the impact of COVID-19 on the Partnership's operational and financial performance will depend on certain developments, including the duration and spread of the outbreak, and the impact on customers, employees, vendors and rent collections, all of which are uncertain and cannot be determined at this time.

Supplementary Information

Baybrook Park Retirement Center, Ltd.

**Schedules of Certain Revenues and Expenses
Years Ended December 31, 2019 and 2018**

	2019	2018
Rental income		
Rent revenue - gross potential	\$ 935,717	\$ 906,212
Garage and parking spaces	13,930	16,013
Miscellaneous rent revenue	3,115	6,971
Total rental income	<u>\$ 952,762</u>	<u>\$ 929,196</u>
Vacancies and concessions		
Apartments vacancies	\$ 45,926	\$ 28,441
Rental concessions	150	1,152
Total vacancies and concessions	<u>\$ 46,076</u>	<u>\$ 29,593</u>
Other operating income		
Laundry and vending	\$ 1,092	\$ 1,380
Cable contract revenue	-	1,785
Pet deposits	450	660
Security deposit forfeitures	625	1,050
Late fees	1,718	1,152
Services income	450	515
Miscellaneous other income	682	599
Total other operating income	<u>\$ 5,017</u>	<u>\$ 7,141</u>
Salaries and employee benefits		
Salaries - administrative	\$ 75,142	\$ 74,587
Salaries - maintenance	51,708	48,790
Payroll taxes	15,690	17,348
Health insurance and other benefits	16,088	18,618
Workmen's compensation insurance	4,842	5,352
Total salaries and employee benefits	<u>\$ 163,470</u>	<u>\$ 164,695</u>
Repairs and maintenance		
Exterminating	\$ 4,116	\$ 6,098
Grounds	23,827	22,726
Fire protection	5,629	35,920
Security services/contract	2,296	2,264
Supplies	12,642	7,992
HVAC expense	13,899	6,946
Painting - exterior	3,554	2,060
Painting, decorating and cleaning	1,348	2,335
Pool	4,807	1,934
Repairs and maintenance - other than contracts	29,445	41,534
Repairs and maintenance - contracts	7,484	13,448
Elevator	23,223	13,047
Carpeting	8,105	8,417
Miscellaneous maintenance expenses	2,283	1,676
Total repairs and maintenance	<u>\$ 142,658</u>	<u>\$ 166,397</u>

Baybrook Park Retirement Center, Ltd.

**Schedules of Certain Revenues and Expenses
Years Ended December 31, 2019 and 2018**

Utilities		
Electricity	\$ 19,389	\$ 18,244
Water	21,160	19,482
Gas	3,432	3,105
Other rent expense	7,083	6,337
Telephone	9,560	9,353
Cable	798	809
	<u>61,422</u>	<u>57,330</u>
Total utilities	\$ 61,422	\$ 57,330
Miscellaneous operating expenses		
Office supplies and expense	\$ 5,151	\$ 13,809
Training and travel	741	644
Telephone and answering service	476	476
Credit collection and eviction	460	416
Computer supplies and expense	3,467	3,572
Bad debt expense	2,111	70
Miscellaneous administrative	16,726	17,478
Advertising and newspaper	6,548	4,665
Special promotions	2,562	2,351
Legal	11,589	1,072
Audit	9,750	10,000
Other professional fees	4,609	4,885
Other taxes, licenses and insurance	-	50
	<u>64,190</u>	<u>59,488</u>
Total miscellaneous operating expenses	\$ 64,190	\$ 59,488
Interest expense - other loans		
Interest expense - second mortgage	\$ 28,563	\$ 28,563
	<u>28,563</u>	<u>28,563</u>
Total interest expense - other loans	\$ 28,563	\$ 28,563
Other financial income (expense)		
Miscellaneous financial expenses	\$ (2,000)	\$ (2,000)
	<u>(2,000)</u>	<u>(2,000)</u>
Total other financial income (expense)	\$ (2,000)	\$ (2,000)
Miscellaneous other income (expense)		
Ground lease expense	\$ (10,160)	\$ (10,160)
	<u>(10,160)</u>	<u>(10,160)</u>
Total miscellaneous other income (expense)	\$ (10,160)	\$ (10,160)
Other related party fees and expenses		
Incentive management fee	\$ 91,760	\$ 96,000
	<u>91,760</u>	<u>96,000</u>
Total other related party fees and expenses	\$ 91,760	\$ 96,000

See Independent Auditor's Report.



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Baybrook Park Retirement Center, Ltd.

**Financial Statements
(With Supplementary Information)
and Independent Auditor's Report**

December 31, 2020 and 2019

Baybrook Park Retirement Center, Ltd.

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Independent Auditor's Report

To the General Partner
Baybrook Park Retirement Center, Ltd.

Report on the Financial Statements

We have audited the accompanying financial statements of Baybrook Park Retirement Center, Ltd., which comprise the balance sheets as of December 31, 2020 and 2019, and the related statements of operations, partners' equity (deficit) and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Baybrook Park Retirement Center, Ltd. as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Report on Supplementary Information

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying 2020 and 2019 supplementary information on pages 17 and 18 is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.



Atlanta, Georgia
April 27, 2021

Baybrook Park Retirement Center, Ltd.

**Balance Sheets
December 31, 2020 and 2019**

Assets

	<u>2020</u>	<u>2019</u>
Current assets		
Cash	\$ 111,552	\$ 85,349
Tenant accounts receivable	966	150
Prepaid expenses	<u>20,554</u>	<u>13,776</u>
Total current assets	<u>133,072</u>	<u>99,275</u>
Restricted deposits and funded reserves		
Tenant security deposits	27,460	28,393
Replacement reserve	135,134	135,159
Real estate tax and insurance escrow	32,203	27,082
Operating deficit reserve	<u>240,316</u>	<u>238,846</u>
Total restricted deposits and funded reserves	<u>435,113</u>	<u>429,480</u>
Rental property		
Buildings and improvement	5,137,146	5,137,146
Land improvements	1,556,649	1,556,649
Furniture and equipment	<u>974,923</u>	<u>974,923</u>
	7,668,718	7,668,718
Accumulated depreciation	<u>(4,312,889)</u>	<u>(4,077,691)</u>
Total rental property	<u>3,355,829</u>	<u>3,591,027</u>
Other assets		
Other intangibles, net	1,841	4,784
Other assets, net	530	530
Prepaid ground lease, net	<u>453,446</u>	<u>462,606</u>
Total other assets	<u>455,817</u>	<u>467,920</u>
Total assets	<u><u>\$ 4,379,831</u></u>	<u><u>\$ 4,587,702</u></u>

Baybrook Park Retirement Center, Ltd.

**Balance Sheets
December 31, 2020 and 2019**

Liabilities and Partners' Equity (Deficit)

	<u>2020</u>	<u>2019</u>
Current liabilities		
Accounts payable	\$ 13,696	\$ 4,112
Accrued expenses	7,558	4,619
Property management fee payable	3,833	3,843
Current maturities of long-term debt - first mortgage	<u>85,884</u>	<u>80,004</u>
Total current liabilities	<u>110,971</u>	<u>92,578</u>
Deposits and prepaid liability		
Tenent security deposit	27,460	28,393
Prepaid rent	<u>501</u>	<u>2,480</u>
Total deposits and prepaid liability	<u>27,961</u>	<u>30,873</u>
Long-term liabilities		
Mortgages payable - first mortgage net of current maturities	2,466,357	2,545,196
Mortgages payable - other mortgages	625,000	625,000
Accrued interest payable - other mortgages - noncurrent	419,436	390,873
Payable to affiliate of the general partner	<u>1,000</u>	<u>1,000</u>
Total long-term liabilities	<u>3,511,793</u>	<u>3,562,069</u>
Commitments	-	-
Partners' equity (deficit)	<u>729,106</u>	<u>902,182</u>
Total liabilities and partners' equity (deficit)	<u>\$ 4,379,831</u>	<u>\$ 4,587,702</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Statements of Operations
Years Ended December 31, 2020 and 2019

	<u>2020</u>	<u>2019</u>
Revenue		
Rental income	\$ 974,838	\$ 952,762
Vacancies and concessions	(46,967)	(46,076)
Other operating income	<u>9,675</u>	<u>5,017</u>
Total revenue	<u>937,546</u>	<u>911,703</u>
Operating expenses		
Salaries and employee benefits	165,960	163,470
Repairs and maintenance	147,242	142,658
Utilities	66,093	61,422
Property management fee	46,821	45,596
Property insurance	55,751	50,405
Miscellaneous operating expenses	<u>52,325</u>	<u>64,190</u>
Total operating expenses	<u>534,192</u>	<u>527,741</u>
Net operating income (loss)	<u>403,354</u>	<u>383,962</u>
Other income (expense)		
Interest income	1,594	3,894
Interest expense - first mortgage	(178,237)	(182,831)
Interest expense - other loans	(28,563)	(28,563)
Other financial income (expense)	(1,417)	(2,000)
Miscellaneous other income (expense)	(10,160)	(10,160)
Annual fee to affiliate of limited partners	(6,506)	(6,408)
Other related party fees and expenses	(100,300)	(91,760)
Depreciation	(235,198)	(235,198)
Amortization	<u>(2,943)</u>	<u>(2,943)</u>
Total other income (expense)	<u>(561,730)</u>	<u>(555,969)</u>
Net loss	<u><u>\$ (158,376)</u></u>	<u><u>\$ (172,007)</u></u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

**Statements of Partners' Equity (Deficit)
Years Ended December 31, 2020 and 2019**

	<u>General Partner</u>	<u>Limited Partners</u>	<u>Total partners' equity (deficit)</u>
Balance, January 1, 2019	\$ (32,150)	\$ 1,116,539	\$ 1,084,389
Net loss	(17)	(171,990)	(172,007)
Distributions	<u>-</u>	<u>(10,200)</u>	<u>(10,200)</u>
Balance, December 31, 2019	(32,167)	934,349	902,182
Net loss	(16)	(158,360)	(158,376)
Distributions	<u>(2,560)</u>	<u>(12,140)</u>	<u>(14,700)</u>
Balance, December 31, 2020	<u>\$ (34,743)</u>	<u>\$ 763,849</u>	<u>\$ 729,106</u>
Partners' percentage of partnership losses	<u>0.01%</u>	<u>99.99%</u>	<u>100.00%</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Statements of Cash Flows
Years Ended December 31, 2020 and 2019

	<u>2020</u>	<u>2019</u>
Cash flows from operating activities		
Net loss	\$ (158,376)	\$ (172,007)
Adjustments to reconcile net loss to net cash provided by operating activities		
Depreciation	235,198	235,198
Amortization	2,943	2,943
Amortization of debt issuance costs	7,488	7,477
Land lease amortization	9,160	9,160
Changes in:		
Tenant accounts receivable	(816)	(150)
Prepaid expenses	(6,778)	3,241
Accounts payable	9,584	(20,939)
Accrued expenses	2,939	2,498
Property management fee payable	(10)	213
Accrued interest payable - other mortgages	28,563	28,563
Tenant security deposits liability	(933)	(440)
Prepaid rent	(1,979)	1,352
Net cash provided by operating activities	<u>126,983</u>	<u>97,109</u>
Cash flows from investing activities		
Change in real estate tax and insurance escrows	(5,121)	9,575
Change in reserve for replacements	5,025	4,669
Net cash (used in) provided by investing activities	<u>(96)</u>	<u>14,244</u>
Cash flows from financing activities		
Principal payments on mortgage payable	(80,447)	(75,841)
Distributions to partners	(14,700)	(10,200)
Net cash used in financing activities	<u>(95,147)</u>	<u>(86,041)</u>
Net increase in cash and restricted cash	31,740	25,312
Cash and restricted cash, beginning	<u>377,588</u>	<u>352,276</u>
Cash and restricted cash, end	<u>\$ 409,328</u>	<u>\$ 377,588</u>
Supplemental disclosure of cash flow information		
Cash paid for interest	<u>\$ 170,749</u>	<u>\$ 175,354</u>

See Notes to Financial Statements.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2020 and 2019

Note 1 - Organization and nature of operations

Baybrook Park Retirement Center, Ltd. (the "Partnership") was organized under the laws of the State of Texas as a limited partnership on February 23, 2004. On June 21, 2005, the Partnership agreement was amended and restated. The Partnership's purpose is to invest in real estate and the construction, operation and sale or leasing of the Partnership property. The Partnership's property consists of a 100-unit low-income apartment complex in Webster, Texas. The project is known as Baybrook Retirement Center (the "Project").

The general partner is HCHA Baybrook Park, LLC (the General Partner). The limited partners (the Limited Partners) are Investors Affordable Housing Group V, Ltd. (the Class A Limited Partner), Hudson SLP, LLC (the Special Limited Partner) and Hudson Baybrook, LLC (the Investment Limited Partner). The Partnership will operate until December 31, 2079, or until its earlier dissolution or termination.

The terms of the Partnership agreement provide, among other things, that profits, losses and tax credits are shared 99.99 percent by the limited partners and .01 percent by the general partner.

Note 2 - Significant accounting policies

Basis of accounting

The financial statements of the Partnership are prepared on the accrual basis of accounting and in accordance with accounting principles generally accepted in the United States of America.

Accounts receivable and bad debts

Tenant receivables are charged to bad debt expense when they are determined to be uncollectible based upon a periodic review of the accounts by management. Accounting principles generally accepted in the United States of America require that the allowance method be used to recognize bad debts; however, the effect of using the direct write-off method is not materially different from the results that would have been obtained under the allowance method.

Rental property

Rental property is recorded at cost. Depreciation is provided for in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives (40 years for buildings and improvements, 15 years for land improvements, and 7 or 5 years for furniture and equipment) using the straight-line method. Improvements are capitalized, while expenditures for maintenance and repairs are charged to expense as incurred. Upon disposal of depreciable property, the appropriate property accounts are reduced by the related costs and accumulated depreciation. Any resulting gains and losses are reflected in the statement of operations.

Estimated service lives are as follows:

Buildings and improvements	40 years
Land improvements	15 years
Furniture and equipment	5-7 years

Impairment of long-lived assets

In accordance with the accounting guidance for impairment or disposal of long-lived assets, the Partnership reviews its rental property for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. When recovery is reviewed, if the undiscounted cash flows estimated to be generated by the property are less than

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2020 and 2019

its carrying amount, management compares the carrying amount of the property to its fair value in order to determine whether an impairment loss has occurred. The amount of the impairment loss is equal to the excess of the asset's carrying value over its estimated fair value. No impairment loss has been recognized during the years ended December 31, 2020 and 2019.

Amortization

Tax credit monitoring fees are being amortized over the compliance period of the tax credits, other intangibles are being amortized over the term of the second mortgage and other assets are being amortized over the term of the interest rate cap loan. Estimated amortization expense for each of the ensuing years through December 31, 2021 is \$1,841.

Rental revenue

Rental income is recognized as rentals become due. Rental payments received in advance are deferred until earned. All leases between the Partnership and the tenants of the property are operating leases.

Debt issuance costs

Debt issuance costs, net of accumulated amortization, are reported as a direct deduction from the face amount of the mortgage loan payable to which such costs relate. Amortization of debt issuance costs is reported as a component of interest expense and is computed using an imputed interest rate on the related loan.

Income taxes

The Partnership has elected to be treated as a pass-through entity for income tax purposes and, as such, is not subject to income taxes. Rather, all items of taxable income, deductions and tax credits are passed through to and are reported by its owners on their respective income tax returns. The Partnership's federal tax status as a pass-through entity is based on its legal status as a partnership. Accordingly, the Partnership is not required to take any tax positions in order to qualify as a pass-through entity. The Partnership is required to file and does file tax returns with the Internal Revenue Service and other taxing authorities. Accordingly, these financial statements do not reflect a provision for income taxes and the Partnership has no other tax positions which must be considered for disclosure. Income tax returns filed by the Partnership are subject to examination by the Internal Revenue Service for a period of three years. While no income tax returns are currently being examined by the Internal Revenue Service, tax years since 2017 remain open.

Use of estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

Advertising

Advertising costs are charged to operations when incurred.

Reclassifications

Certain items from the prior year financial statements have been reclassified to conform to the current year presentation.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2020 and 2019

Note 3 - Restricted deposits and funded reserves

Operating deficit reserve

Pursuant to the partnership agreement, the Partnership was required to establish an operating reserve account to fund any operating deficits. The sum of \$175,000 from the proceeds of the third capital installment and from the proceeds of the fourth capital installment shall be initially deposited into the reserve. The funds may be released to pay operating expenses with the approval of the special limited partner. As of December 31, 2020 and 2019, the balance of the operating reserve was \$240,316 and \$238,846.

Security deposits

Security deposits are deposited into the operating account and are generally held until termination of the leases, at which time some or all of the deposits may be returned to the lessees. As of December 31, 2020 and 2019, the tenant security deposit balance was \$27,460 and \$28,393.

Insurance escrow

In accordance with the loan agreement, the property is required to make monthly deposits to the insurance escrow. Funds accumulated in this account are utilized to pay for the annual liability and property insurance bills. As of December 31, 2020 and 2019, the balance of this account was \$32,203 and \$27,082.

Replacement reserve

Pursuant to the partnership agreement, the Partnership is required to make monthly deposits equal to \$250 per apartment unit, of which \$50 is required to be paid with funds from net cash available. The deposits to the replacement reserve are to be increased annually by changes in the consumer price index. Monthly deposits are placed into an interest-bearing account held by the lender for major repairs and improvements of the Project. As of December 31, 2020 and 2019, the balance of the replacement reserve was \$135,134 and \$135,159.

	2020	2019
Balance, January 1	\$ 135,159	\$ 134,828
Deposits	25,004	25,005
Interest earnings	124	376
Withdrawals	(25,153)	(25,050)
Balance, December 31	<u>\$ 135,134</u>	<u>\$ 135,159</u>

Note 4 - Related party transactions

Management fee

The Project is currently managed by Investors Management Group, LLC, a related party of the Class A Limited Partner. The management agreement provides, among other things, for a management fee of 5 percent of gross effective income collected from operations, provided that 20 percent of the fee is subordinated to the payment of the Project's debt service and other operating expenses. As of December 31, 2020 and 2019, \$46,821 and \$45,596 in fees had been earned and \$3,833 and \$3,843 remained payable.

Incentive management fee

Pursuant to the partnership agreement, the General Partner and Class A Limited Partner may receive an annual, non-cumulative incentive partnership management fee equal to 11 percent of

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2020 and 2019

gross effective income and payable from net cash available for distribution. For the years ended December 31, 2020 and 2019, \$100,300 and \$91,760, of incentive management fees had been earned and paid.

Asset management fee

Pursuant to the partnership agreement and subject to the priority distributions of net cash flow, the Special Limited Partner may receive an annual cumulative asset management fee of \$5,000, adjusted for the change in the consumer price index in effect on the date of adjustment over the date in effect on the date of adjustment over the date in effect twelve months prior, for its services in monitoring the operations of the Partnership. For the years ended December 31, 2020 and 2019, \$6,506 and \$6,408 was incurred and \$- and \$- remained payable.

Note 5 - Statements of cash flows

The following table provides a reconciliation of cash and restricted cash reported within the balance sheets that sum to the total of the same such amounts in the statements of cash flows:

	2020	2019
Cash	\$ 111,552	\$ 85,349
Deposits held in operating reserve	27,460	28,393
Replacement reserve funds held by management	30,000	25,000
Operating deficit reserve	240,316	238,846
Total cash and restricted cash shown in statements of cash flows	<u>\$ 409,328</u>	<u>\$ 377,588</u>

The amount included in restricted cash consists of security deposits held in the operating reserve for the future benefit of tenants upon moving out of the property, replacement reserves, and operating deficit reserves as required by regulatory authority.

Note 6 - Mortgage payable and note payable

First mortgage payable

On December 14, 2007, construction financing of \$3,300,000 was converted to permanent financing for the Project from the lender. The mortgage loan bears interest at 6.44 percent, requires monthly principal and interest payments of \$20,933 and is due and payable in 180 consecutive monthly installments of principal and interest, commencing February 2008. The loan matures on June 21, 2022. The mortgage is collateralized by the Project. For the years ended December 31, 2020 and 2019, interest expense of \$178,237 and \$182,831 was incurred, which includes amortization of debt issuance costs of \$7,488 and \$7,447. The loan balance associated with this loan at December 31, 2020 and 2019 was \$2,563,785 and \$2,644,232. The accrued interest balance associated with this loan at December 31, 2020 and 2019 was \$- and \$-.

Debt issuance costs, net of accumulated amortization, totaled \$11,544 and \$19,032 as of December 31, 2020 and 2019 are related to the first mortgage. Debt issuance costs on the above note are being amortized using an imputed rate of 6.85 percent.

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2020 and 2019

HOME loan payable

In June 2005, the Partnership obtained a HOME loan in the total amount of \$625,000 from Harris County Housing Authority. The HOME loan accrues interest on the outstanding balance at the applicable federal interest rate in place on the date of the agreement, which was 4.57 percent. The HOME loan matures on August 31, 2027, is collateralized by the Project, and is subordinate to the mortgage. Payments of principal and unpaid interest are required at maturity. As of December 31, 2020 and 2019, principal of \$625,000 and \$625,000 was outstanding. As of December 31, 2020 and 2019, accrued interest of \$419,435 and \$390,873, was outstanding.

Future expected principal payments on the mortgage are required as follows:

	Amegy Bank	HCHA	Total
2021	\$ 85,884	\$ -	\$ 85,884
2022	2,477,901	-	2,477,901
2023	-	-	-
2024	-	-	-
2025	-	-	-
Thereafter	-	625,000	624,583
Total	<u>\$ 2,563,785</u>	<u>\$ 625,000</u>	3,188,368
Less current maturities			<u>(85,884)</u>
Net long-term portion			<u>\$ 3,102,484</u>

Note 7 - Capital contributions

Total Investment Limited Partner capital contributions in accordance with the partnership agreement, as amended, are \$4,626,774, of which all contributions have been received as of December 31, 2020 and 2019, respectively.

Note 8 - Cash flow distribution

Cash flow for each fiscal year after the first (1st) anniversary of the completion date shall be distributed or applied, as applicable, within ninety (90) days after the end of each fiscal year, in the following order of priority:

- applied to the payment due to the Investment Partnership for any Operational Reduction amount due and owing;
- an amount equal to the payment due and owing toward the "Reserve Minimum Payment" equal to \$50 per unit;
- to fund any deficiency in the operating reserve;
- to the payment of any accrued and unpaid asset management fee, in an amount equal to 1% of gross effective income;
- until the deferred development fee has been paid in full, to the payment of the deferred development fee;

Baybrook Park Retirement Center, Ltd.

Notes to Financial Statements December 31, 2020 and 2019

- f. if there are any outstanding operating deficit loans, until such operating deficit loans have been paid in full, to the payment of the outstanding operating deficit loans and then, to the general partner or Class A limited partner, as applicable, until there shall have been cumulative distributions in the aggregate equal to the special capital contribution, if any;
- g. any remaining amount up to 90% of net cash flow to the payment of the incentive management fee;
- h. thereafter, any remaining to the partners in accordance with their respective interests

Note 9 - Partnership guarantees

Operating deficit guaranty

Pursuant to the partnership agreement, at any time during the period beginning upon the date breakeven operations is achieved and ending on the third anniversary of such date, the General Partner must provide funds to the Partnership as is necessary to pay operating deficits. The General Partner is not obligated to provide funds in excess of \$260,000, as defined. Operating deficit loans bear no interest. As of December 31, 2020 and 2019, no amounts were funded.

Note 10 - Concentration of credit risk

The Partnership maintains cash with financial institutions. The Partnership has not experienced any losses with respect to its bank balances in excess of government provided insurance. Management believes that no significant concentration of credit risk exists with respect to these balances as of December 31, 2020 and 2019.

Note 11 - Commitments

Ground lease

In June 2005, the Partnership entered into a 65-year ground lease with the Harris County Housing Authority, an affiliate of the General Partner. The initial payment for the ground lease was \$595,427 and is recognized over the term of the lease. Under the terms of the agreement of the ground lease, the Partnership is required to make annual lease payments of \$1,000 during the first 17 years. Beginning in year 18, the annual lease payment increases to \$65,000 for the remaining term of the ground lease, with all but \$1,000 of that waived, provided that the Project is leased to tenants in accordance with all applicable low-income housing requirements. As of December 31, 2020 and 2019, the prepaid ground lease was \$453,446 and \$462,606.

The total ground lease expense for the years ended December 31, 2020 and 2019 includes prepaid ground lease recognition of \$9,160 and \$9,160 and a rent payment of \$1,000 and \$1,000. As of December 31, 2020 and 2019, lease payable of \$2,000 and \$1,000, respectively, remain outstanding.

Baybrook Park Retirement Center, Ltd.

**Notes to Financial Statements
December 31, 2020 and 2019**

Future minimum rental payments for each of the next five years and in the aggregate, are:

2021	\$	1,000
2022		1,000
2023		1,000
2024		1,000
2025		1,000
Thereafter		<u>45,000</u>
	\$	<u>50,000</u>

Note 12 - Litigation

The Partnership is subject to litigation from time to time arising in the ordinary course of business. These matters are frequently covered by insurance. If it has been determined that a loss is probable to occur and can be reasonably estimated, the estimated amount of the loss is recorded in the financial statements. While the resolution of these matters cannot be predicted with certainty, management currently believes the final outcome of such matters will not have a material adverse effect on the financial position or results of operations from the Partnership.

Note 13 - Subsequent events

Events that occur after the balance sheet date but before the financial statements were available to be issued must be evaluated for recognition or disclosure. The effects of subsequent events that provide evidence about conditions that existed at the balance sheet date are recognized in the accompanying financial statements. Subsequent events which provide evidence about conditions that existed after the balance sheet date require disclosure in the accompanying notes. Management evaluated the activity of Baybrook Park Retirement Center, Ltd. through April 27, 2021 (the date the financial statements were available to be issued) and concluded that no subsequent events other than the subsequent event discussed below have occurred that would require recognition in the Financial Statements or disclosure in the Notes to the Financial Statements.

In early 2020, an outbreak of a novel strain of coronavirus ("COVID-19") emerged globally. As a result, events have occurred including mandates from federal, state and local authorities leading to an overall decline in economic activity which could result in a loss of lease revenue and other material adverse effects to the Partnership's financial position, results of operations, and cash flows. As of December 31, 2020, the global pandemic is still ongoing. Management continues to monitor the results of operations to evaluate the economic impact of the pandemic on the project.

Supplementary Information

Baybrook Park Retirement Center, Ltd.

**Schedules of Certain Revenues and Expenses
Years Ended December 31, 2020 and 2019**

	2020	2019
Rental income		
Rent revenue - gross potential	\$ 957,312	\$ 935,717
Garage and parking spaces	14,043	13,930
Miscellaneous rent revenue	3,483	3,115
Total rental income	<u>\$ 974,838</u>	<u>\$ 952,762</u>
Vacancies and concessions		
Apartments vacancies	\$ 46,807	\$ 45,926
Rental concessions	160	150
Total vacancies and concessions	<u>\$ 46,967</u>	<u>\$ 46,076</u>
Other operating income		
Laundry and vending	\$ 909	\$ 1,092
Tenant charges	423	-
Cable contract revenue	4,748	-
Pet deposits	450	450
Security deposit forfeitures	960	625
Late fees	15	1,718
Services income	600	450
Miscellaneous other income	1,570	682
Total other operating income	<u>\$ 9,675</u>	<u>\$ 5,017</u>
Salaries and employee benefits		
Salaries - administrative	\$ 73,715	\$ 75,142
Salaries - maintenance	51,149	51,708
Payroll taxes	17,176	15,690
Health insurance and other benefits	18,460	16,088
Workmen's compensation insurance	5,460	4,842
Total salaries and employee benefits	<u>\$ 165,960</u>	<u>\$ 163,470</u>
Repairs and maintenance		
Exterminating	\$ 4,462	\$ 4,116
Grounds	27,690	23,827
Fire protection	7,372	5,629
Security services/contract	1,232	2,296
Supplies	13,347	12,642
HVAC expense	20,883	13,899
Painting - exterior	3,140	3,554
Painting, decorating and cleaning	4,713	1,348
Pool	4,289	4,807
Repairs and maintenance - other than contracts	33,594	29,445
Repairs and maintenance - contracts	4,210	7,484
Elevator	12,894	23,223
Carpeting	8,073	8,105
Miscellaneous maintenance expenses	1,343	2,283
Total repairs and maintenance	<u>\$ 147,242</u>	<u>\$ 142,658</u>

Baybrook Park Retirement Center, Ltd.

**Schedules of Certain Revenues and Expenses
Years Ended December 31, 2020 and 2019**

	2020	2019
Utilities		
Electricity	\$ 17,603	\$ 19,389
Water	25,507	21,160
Gas	3,172	3,432
Other rent expense	8,941	7,083
Telephone	9,964	9,560
Cable	906	798
	<u>66,093</u>	<u>61,422</u>
Total utilities	\$ <u>66,093</u>	\$ <u>61,422</u>
Miscellaneous operating expenses		
Office supplies and expense	\$ 2,501	\$ 5,151
Training and travel	462	741
Telephone and answering service	436	476
Credit collection and eviction	441	460
Computer supplies and expense	3,190	3,467
Bad debt expense	658	2,111
Miscellaneous administrative	18,458	16,726
Advertising and newspaper	7,282	6,548
Special promotions	2,773	2,562
Legal	181	11,589
Audit	9,750	9,750
Other professional fees	5,868	4,609
Other taxes, licenses and insurance	325	-
	<u>52,325</u>	<u>64,190</u>
Total miscellaneous operating expenses	\$ <u>52,325</u>	\$ <u>64,190</u>
Interest expense - other loans		
Interest expense - second mortgage	\$ 28,563	\$ 28,563
	<u>28,563</u>	<u>28,563</u>
Total interest expense - other loans	\$ <u>28,563</u>	\$ <u>28,563</u>
Other financial income (expense)		
Miscellaneous financial expenses	\$ (1,417)	\$ (2,000)
	<u>(1,417)</u>	<u>(2,000)</u>
Total other financial income (expense)	\$ <u>(1,417)</u>	\$ <u>(2,000)</u>
Miscellaneous other income (expense)		
Ground lease expense	\$ (10,160)	\$ (10,160)
	<u>(10,160)</u>	<u>(10,160)</u>
Total miscellaneous other income (expense)	\$ <u>(10,160)</u>	\$ <u>(10,160)</u>
Other related party fees and expenses		
Incentive management fee	\$ 100,300	\$ 91,760
	<u>100,300</u>	<u>91,760</u>
Total other related party fees and expenses	\$ <u>100,300</u>	\$ <u>91,760</u>

See Independent Auditor's Report.



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Rent Roll

BAYBROOK PARK

Hettig Management

Rent Roll

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Current

Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
101	1x130	650	Tessa Hebert	C	398.00	BASE RENT	398.00	04/01/14	04/01/20	03/31/21		0.00	500.00	0.00
						Total	398.00							
102	1x1M	650	Vacant Unit		915.00		0.00					0.00	0.00	0.00
						Total	0.00							
103	1x160	650	Kathy Muston	C	842.00	BASE RENT	842.00	11/27/20	11/27/20	10/31/21		0.00	250.00	0.00
						Total	842.00							
104	1x160	650	Shirley Squibb	C	842.00	BASE RENT	842.00	03/04/20	03/01/21	02/28/22		0.00	250.00	31.00
						Total	842.00							
105	1x160	650	Joyce Rutter	C	842.00	BASE RENT	842.00	03/24/16	03/01/21	02/28/22		0.00	250.00	0.00
						Total	842.00							
106	1x1M	650	Myrna Hudson	C	915.00	BASE RENT	915.00	04/28/17	04/01/21	03/31/22		0.00	250.00	-75.00
						Total	915.00							
107	1x160	650	Elizabeth Devall	C	842.00	BASE RENT	299.00	10/11/19	10/01/20	09/30/21		0.00	250.00	-48.00
						CITY HOUSING	490.00							
						Total	789.00							
108	1x150	650	Gerry Derouen	C	694.00	BASE RENT	694.00	12/26/18	12/01/20	05/31/21	05/31/21	0.00	350.00	0.00
						Total	694.00							
109	1x1M	650	Kathryn Conner	C	915.00	Base Rent	915.00	04/15/13	04/01/21	03/31/22		0.00	200.00	0.00
						Total	915.00							
110	1x1M	650	Vacant Unit		915.00		0.00					0.00	0.00	0.00
						Total	0.00							
111	1x160	650	Christoper Davis	C	842.00	BASE RENT	197.00	12/21/16	04/01/21	03/31/22		0.00	285.00	-10.00
						CITY HOUSING	598.00							
						Total	795.00							
112	1x160	650	Jeanette Duff	C	842.00	BASE RENT	842.00	03/04/20	03/01/21	02/28/22		0.00	250.00	0.00
						Total	842.00							
113	1x160	650	Julia Rodriguez	C	842.00	COUNTY HOUSIN	604.00	05/24/11	09/01/20	08/31/21		0.00	200.00	0.00
						BASE RENT	157.00							
						Total	761.00							
114	1x150	650	Judy Williams	C	694.00	BASE RENT	694.00	01/25/21	01/25/21	12/31/21		0.00	550.00	-116.50

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Current

Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
						Total	694.00							
115	1x150	650	Karen Breniser	C	694.00	BASE RENT	694.00	06/23/16	06/01/20	05/31/21		0.00	250.00	0.00
						Total	694.00							
116	1x1M	650	Michael Paige	C	915.00	BASE RENT	915.00	05/24/21	05/24/21	04/30/22		0.00	250.00	0.00
						Total	915.00							
117	1x160	650	Ana Tiradl	C	842.00	COUNTY HOUSIN	811.00	07/03/20	07/03/20	06/30/21		0.00	250.00	0.00
						Total	811.00							
118	1x160	650	Pamela Assunto	C	842.00	BASE RENT	842.00	05/21/21	05/24/21	04/30/22		0.00	250.00	0.00
						Total	842.00							
119	1x150	650	Priscilla Rosado	C	694.00	BASE RENT	694.00	12/01/20	12/01/20	11/30/21		0.00	250.00	0.00
						Total	694.00							
120	1x160	650	Patricia Byrd Dela	C	842.00	BASE RENT	842.00	03/03/20	03/01/21	02/28/22		0.00	250.00	-0.40
						Total	842.00							
121	1x160	650	Barbara Ray	C	842.00	BASE RENT	842.00	08/14/20	08/14/20	07/31/21		0.00	350.00	0.00
						Total	842.00							
122	1x160	650	Linda Delmonte	C	842.00	BASE RENT	842.00	02/02/17	02/01/21	01/31/22		0.00	250.00	0.00
						Total	842.00							
123	1x160	650	Julie Alcorn	C	842.00	BASE RENT	313.00	12/27/19	12/01/20	11/30/21		0.00	250.00	0.00
						COUNTY HOUSIN	498.00							
						GARAGE: 905	80.00							
						Total	891.00							
124	1x160	650	Bernadine Horvat	C	842.00	BASE RENT	795.00	05/04/18	07/01/20	06/30/21		0.00	250.00	0.00
						Total	795.00							
125	1x130	650	Linda Hattabaugh	C	398.00	BASE RENT	398.00	05/05/18	05/01/21	04/30/22		0.00	300.00	0.00
						Total	398.00							
126	1x160	650	Darlene Monceau	C	842.00	BASE RENT	836.00	04/02/19	04/01/21	03/31/22		0.00	250.00	0.00
						Total	836.00							
127	1x150	650	Diana Cordova	C	694.00	BASE RENT	694.00	12/20/19	01/01/21	12/31/21		0.00	250.00	0.00
						Total	694.00							
128	1x160	650	Donald Henry	C	842.00	BASE RENT	260.00	02/01/13	04/01/21	03/31/22		0.00	200.00	0.00

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Current

Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
						COUNTY HOUSIN	551.00							
						Total	811.00							
129	1x160	650	Patricia Pernell	C	842.00	Base Rent	820.00	04/04/12	05/01/21	04/30/22		0.00	235.00	0.00
						Total	820.00							
130	1x160	650	Joyce Booker	C	842.00	BASE RENT	333.00	12/30/16	07/01/20	06/30/21		0.00	250.00	2,117.10
						CITY HOUSING	428.00							
						Total	761.00							
131	1x160	650	Donald O Farrell	C	842.00	BASE RENT	338.00	05/22/20	05/01/21	04/30/22		0.00	250.00	0.00
						CITY HOUSING	473.00							
						Total	811.00							
132	1x160	650	Ronald Adams	C	842.00	BASE RENT	524.00	01/15/20	01/01/21	12/31/21		0.00	250.00	-1.00
						CITY HOUSING	287.00							
						Total	811.00							
133	1x150	650	Ruben Garcia	C	694.00	BASE RENT	694.00	01/12/18	01/01/21	12/31/21		0.00	250.00	0.00
						GARAGE: 605	80.00							
						Total	774.00							
134	1x160	650	Leta Young	C	842.00	BASE RENT	842.00	03/01/19	03/01/21	02/28/22		0.00	250.00	0.00
						Total	842.00							
135	1x160	650	Cathy McFaddin	C	842.00	BASE RENT	795.00	07/05/18	07/01/20	06/30/21		0.00	630.00	0.00
						Total	795.00							
136	1x160	650	Ed Hart	C	842.00	BASE RENT	842.00	05/19/21	05/19/21	04/30/22		0.00	250.00	0.00
						Total	842.00							
137	1x160	650	Kumsun Yi	C	842.00	BASE RENT	842.00	05/14/20	05/01/21	04/30/22		0.00	250.00	0.00
						GARAGE: 803	80.00							
						Total	922.00							
138	1x160	650	Maria Rendon	C	842.00	BASE RENT	842.00	02/04/21	02/04/21	01/31/22		0.00	250.00	0.00
						Total	842.00							
139	1x130	650	Pedro Diaz	C	398.00	BASE RENT	373.00	06/01/13	06/01/20	05/31/21		0.00	200.00	2.00
						Total	373.00							
140	1x1M	650	Roxanne Allen	C	915.00	COUNTY HOUSIN	585.00	12/05/15	01/01/21	12/31/21		0.00	250.00	-108.00

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Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
						BASE RENT	269.00							
						Total	854.00							
141	1x160	650	Leslie Curtis	C	842.00	BASE RENT	49.00	07/05/19	07/01/20	06/30/21		0.00	250.00	0.00
						CITY HOUSING	746.00							
						Total	795.00							
142	1x160	650	Deborah Wilson	C	842.00	BASE RENT	842.00	12/22/20	12/22/20	11/30/21		0.00	250.00	0.00
						Total	842.00							
143	1x130	650	Evelyn Ragsdale	C	398.00	BASE RENT	398.00	06/26/17	06/01/20	05/31/21		0.00	250.00	0.00
						Total	398.00							
144	1x1M	650	Cathy Cowan	C	915.00	COUNTY HOUSIN	915.00	02/11/21	02/11/21	01/13/22		0.00	250.00	-39.00
						Total	915.00							
145	1x1M	650	Nancy Weiss	C	915.00	Base Rent	915.00	08/11/07	09/01/20	08/31/21		0.00	300.00	0.00
						Total	915.00							
146	1x1M	650	Charles Stewart	C	915.00	BASE RENT	915.00	02/04/16	02/01/21	01/31/22		0.00	250.00	0.00
						Total	915.00							
147	1x160	650	Migdalia Torres	C	842.00	BASE RENT	206.00	02/01/07	10/01/20	09/30/21		0.00	200.00	0.00
						CITY HOUSING	555.00							
						Total	761.00							
148	1x150	650	Kelly Lockhart	C	694.00	BASE RENT	694.00	02/14/13	02/01/21	01/31/22		0.00	200.00	0.00
						Total	694.00							
149	1x1M	650	John Urdiales	C	915.00	BASE RENT	890.00	02/15/13	03/01/21	02/28/22		0.00	200.00	-10.00
						Total	890.00							
150	1x150	650	Brenda Arkangel	C	694.00	BASE RENT	694.00	12/01/18	12/01/20	11/30/21		0.00	250.00	0.00
						Total	694.00							
151	1x160	650	Vacant Unit		842.00		0.00					0.00	0.00	0.00
						Total	0.00							
152	1x160	650	William Copelan	C	842.00	BASE RENT	842.00	02/01/21	02/01/21	01/31/22		0.00	550.00	0.00
						Total	842.00							
153	1x1M	650	Vacant Unit		915.00		0.00					0.00	0.00	0.00
						Total	0.00							

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Current

Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
154	1x1M	650	Charles Lynch	C	915.00	BASE RENT	865.00	06/01/19	06/01/20	05/31/21		0.00	250.00	0.00
						Total	865.00							
155	1x1M	650	John Nhiser	C	915.00	BASE RENT	915.00	08/24/18	08/01/20	07/31/21		0.00	250.00	0.00
						Total	915.00							
156	1x160	650	Jill Danner	C	842.00	BASE RENT	842.00	11/03/20	11/03/20	10/31/21		0.00	250.00	0.00
						Total	842.00							
157	1x130	650	meta nandy	C	398.00	Base Rent	398.00	04/03/13	04/01/21	03/31/22		0.00	235.00	0.00
						Total	398.00							
158	1x150	650	Sherry Meek	C	694.00	BASE RENT	694.00	11/11/19	11/01/20	10/31/21		0.00	250.00	0.00
						Total	694.00							
159	1x130	650	Margaret Lindsey	C	398.00	BASE RENT	398.00	05/07/21	05/07/21	04/30/22		0.00	250.00	-6.00
						Total	398.00							
160	1x160	650	Sherry Brown	C	842.00	BASE RENT	794.00	03/28/19	03/01/21	02/28/22		0.00	250.00	-25.00
						Total	794.00							
161	1x150	650	Lillian Overstreet	C	694.00	BASE RENT	694.00	05/20/21	05/20/21	04/30/22		0.00	250.00	0.00
						Total	694.00							
162	1x160	650	Sheila Plewes	C	842.00	BASE RENT	842.00	08/10/15	08/01/20	07/31/21		0.00	200.00	0.00
						Total	842.00							
163	1x150	650	Glenda Coffman	C	694.00	BASE RENT	671.00	06/12/20	06/12/20	05/31/21		0.00	250.00	-14.00
						Total	671.00							
164	1x160	650	David Hamblin	C	842.00	BASE RENT	842.00	05/24/19	05/01/21	04/30/22		0.00	250.00	46.00
						Total	842.00							
165	1x160	650	Barry Collins	C	842.00	BASE RENT	276.00	01/22/14	08/01/20	07/31/21		0.00	200.00	-8.00
						COUNTY HOUSIN	519.00							
						Total	795.00							
166	1x150	650	R.J. CONWAY	C	694.00	Base Rent	655.00	07/29/06	07/01/20	06/30/21		0.00	200.00	0.00
						Total	655.00							
167	1x150	650	Harper Lawson	C	694.00	BASE RENT	694.00	09/14/19	09/01/20	08/31/21		0.00	250.00	0.00
						Total	694.00							
168	1x150	650	Aundrey Pierce	C	694.00	BASE RENT	668.00	07/15/19	07/01/20	06/30/21		0.00	250.00	-10.00

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Current

Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
						Total	668.00							
201	2x260	972	Kim Mitchell	C	990.00	BASE RENT	981.00	02/01/19	02/01/21	01/31/22		0.00	350.00	-36.00
						GARAGE: 906	80.00							
						Total	1,061.00							
202	2x250	972	Valree Brooks	C	812.00	BASE RENT	812.00	01/09/17	01/01/21	12/31/21		0.00	350.00	-0.30
						Total	812.00							
203	2x260	972	Gracie Richards,	C	990.00	BASE RENT	990.00	11/10/18	11/01/19	10/31/20		0.00	350.00	0.00
						Total	990.00							
204	2x260	972	Vacant Unit		990.00		0.00					0.00	0.00	0.00
						Total	0.00							
205	2x250	972	Eve Foremen	C	812.00	Base Rent	804.00	11/30/06	12/01/20	11/30/21		0.00	400.00	0.00
						Total	804.00							
206	2x260	972	Jeannine Chiles	C	990.00	Base Rent	929.00	06/11/14	06/01/20	05/31/21		0.00	300.00	0.00
						GARAGE: 806	80.00							
						Total	1,009.00							
207	2x260	972	Donna Alvarez	C	990.00	Base Rent	990.00	08/19/14	08/01/20	07/31/21		0.00	530.00	0.00
						GARAGE: 704	80.00							
						Total	1,070.00							
208	2x260	972	Frances Navarro	C	990.00	BASE RENT	516.00	07/11/16	12/01/20	11/30/21		0.00	350.00	0.00
						CITY HOUSING	379.00							
						Total	895.00							
301	2x260	972	Garry Rogers	C	990.00	BASE RENT	960.00	05/16/16	05/01/21	04/30/22		0.00	350.00	-4.00
						GARAGE: 901	80.00							
						Total	1,040.00							
302	2x230	972	Tien-Ting Yao	C	457.00	Base Rent	429.00	07/15/06	07/01/20	06/30/21		0.00	250.00	0.00
						Total	429.00							
303	2x2M	972	Robert Bunnell	C	1,115.00	BASE RENT	1,115.00	12/31/19	12/01/20	11/30/21		0.00	350.00	0.00
						GARAGE	80.00							
						Total	1,195.00							
304	2x2M	972	Linda Hawkins	C	1,115.00	Base Rent	1,115.00	06/03/06	09/01/20	08/31/21		0.00	250.00	0.00

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Current

Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
						Total	1,115.00							
305	2x260	972	Betty Graham	C	990.00	BASE RENT	982.00	10/01/18	10/01/20	09/30/21		0.00	350.00	-18.00
						GARAGE: 705	80.00							
						GARAGE: 706	80.00							
						Total	1,142.00							
306	2x260	972	Selden Lotz	C	990.00	BASE RENT	990.00	11/20/19	11/01/20	10/31/21		0.00	350.00	0.00
						Total	990.00							
307	2x230	972	Xiaopei Lin	C	457.00	CITY HOUSING	210.00	04/11/12	05/01/21	04/30/22		0.00	250.00	-64.00
						BASE RENT	219.00							
						Total	429.00							
308	2x260	972	Charles Mallett	C	990.00	COUNTY HOUSIN	566.00	02/01/15	04/01/21	03/31/22		0.00	300.00	0.00
						BASE RENT	385.00							
						Total	951.00							
401	2x2M	972	Linda Wood	C	1,115.00	BASE RENT	1,115.00	02/22/20	03/01/21	08/31/21		0.00	350.00	-10.00
						GARAGE: 606	80.00							
						Total	1,195.00							
402	2x230	972	Mounamkhair Aka	C	457.00	BASE RENT	457.00	11/11/16	10/01/20	09/30/21		0.00	350.00	-1.00
						GARAGE: 603	80.00							
						Total	537.00							
403	2x2M	972	Rogelio Ramirez	C	1,115.00	BASE RENT	1,115.00	04/24/20	04/01/21	03/31/22		0.00	350.00	0.00
						Total	1,115.00							
404	2x250	972	Kay Rhea	C	812.00	BASE RENT	779.00	02/01/20	02/01/21	01/31/22		0.00	350.00	0.00
						Total	779.00							
405	2x250	972	Patricia Hoffman	C	812.00	BASE RENT	812.00	03/01/13	03/01/21	02/28/22		0.00	450.00	0.00
						GARAGE: 701	80.00							
						Total	892.00							
406	2x250	972	Jesse McClain	C	812.00	BASE RENT	766.00	07/25/16	07/01/20	06/30/21		0.00	650.00	0.00
						Total	766.00							
407	2x260	972	Patricia Brown	C	990.00	Base Rent	990.00	08/23/11	09/01/20	08/31/21		0.00	335.00	-28.00
						Total	990.00							

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Unit	Type	Sq. Feet	Residents	Status	Market Rent	Description	Amount	Move In	Lease Start	Lease End	Move Out	Surety Bonds	Deposits	Balance
408	2x2M	972	Lucia Paragas	C	1,115.00	BASE RENT	1,115.00	02/21/20	02/01/21	01/31/22		0.00	350.00	0.00
						Total	1,115.00							
501	2x260	972	Carolyn Graves	C	990.00	BASE RENT	990.00	01/10/20	01/01/21	06/30/21	05/31/21	0.00	350.00	0.00
						Total	990.00							
502	2x260	972	Patrick Quinn	C	990.00	BASE RENT	982.00	01/30/15	03/01/21	02/28/22		0.00	300.00	0.00
						Total	982.00							
503	2x260	972	Sandra Gutierrez	C	990.00	BASE RENT	990.00	01/01/21	01/01/21	12/31/21		0.00	350.00	25.00
						Total	990.00							
504	2x260	972	Beverly Rhoads	C	990.00	BASE RENT	990.00	11/04/16	11/01/20	10/31/21		0.00	350.00	0.00
						Total	990.00							
505	2x2M	972	Walter Olendersk	C	1,115.00	BASE RENT	1,115.00	11/01/18	11/01/20	10/31/21		0.00	350.00	0.00
						GARAGE: 604	80.00							
						Total	1,195.00							
506	2x250	972	Norma Roeder	C	812.00	BASE RENT	804.00	04/08/19	04/01/21	03/31/22		0.00	650.00	0.00
						Total	804.00							
507	2x260	972	Wayne Philhower	C	990.00	BASE RENT	929.00	07/22/16	07/01/20	06/30/21		0.00	350.00	0.00
						GARAGE: 703	80.00							
						Total	1,009.00							
508	2x2M	972	Steven Jones	C	1,115.00	BASE RENT	1,115.00	02/19/17	02/01/21	01/31/22		0.00	350.00	0.00
						Total	1,115.00							
					83,357.00							0.00	28,350.00	1,588.90

Total Charges

Description	Total
BASE RENT	68,092.00
CITY HOUSING	4,166.00
COUNTY HOUSING	5,049.00
GARAGE	1,200.00
	78,507.00

Total Credits

Description	Total

* denotes unit is excluded from occupancy calculations
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BAYBROOK PARK

Hettig Management

Rent Roll

5/25/2021

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Property Occupancy

Type	Status	Market Rent		Units		Square Footage	
Total	Occupied	78,780.00	94.5%	95	95.0%	71,732.00	95.3%
Total	Vacant	4,577.00	5.5%	5	5.0%	3,572.00	4.7%
		83,357.00		100		75,304.00	

Unit Type Occupancy

Type	Status	Market Rent		Units		Square Footage	
1x130	Occupied	2,388.00	100.0%	6	100.0%	3,900.00	100.0%
1x130	Vacant	0.00	0.0%	0	0.0%	0.00	0.0%
1x150	Occupied	9,716.00	100.0%	14	100.0%	9,100.00	100.0%
1x150	Vacant	0.00	0.0%	0	0.0%	0.00	0.0%
1x160	Occupied	28,628.00	97.1%	34	97.1%	22,100.00	97.1%
1x160	Vacant	842.00	2.9%	1	2.9%	650.00	2.9%
1x1M	Occupied	9,150.00	76.9%	10	76.9%	6,500.00	76.9%
1x1M	Vacant	2,745.00	23.1%	3	23.1%	1,950.00	23.1%
2x230	Occupied	1,371.00	100.0%	3	100.0%	2,916.00	100.0%
2x230	Vacant	0.00	0.0%	0	0.0%	0.00	0.0%
2x250	Occupied	4,872.00	100.0%	6	100.0%	5,832.00	100.0%
2x250	Vacant	0.00	0.0%	0	0.0%	0.00	0.0%
2x260	Occupied	14,850.00	93.8%	15	93.8%	14,580.00	93.8%
2x260	Vacant	990.00	6.3%	1	6.3%	972.00	6.3%
2x2M	Occupied	7,805.00	100.0%	7	100.0%	6,804.00	100.0%
2x2M	Vacant	0.00	0.0%	0	0.0%	0.00	0.0%
		83,357.00		100		75,304.00	

Collections

Account	Collections Total	Previously Billed	Amount Paid	Agreement Amount
Totals				

* denotes unit is excluded from occupancy calculations
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ATTACHMENT Q

Operation Statements - Baybrook Park May 2020-May 2021

[Link to Operation Statements May 2020 - May 2021](#)