CITY OF HOUSTON
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND DELIVERY CORRESPONDENCE

POSSIBLE DUPLICATE COPY DO NOT DUPLICATE SHIPMENT OR SERVICE

SERVICE RELEASE ORDER

Vendor Address

Vendor Address Number 140330
APV REDEVELOPMENT CORPORATION
2640 FOUNTAIN VIEW STE 400
HOUSTON TX 77057
USA

Mail Invoice to

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

Information

SRO Number/Date	**4500345872-0 / 04/20/2021**
CoH Vendor Number	**140330**
Page	**1 of 2**
Buyer's Name	**Arva Dearborne 458**
Buyer's Telephone Number	**832-394-6328**
Buyer's Fax Number	
Buyer's E-mail Address	**Arva.dearborne@houstontx.gov**

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

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

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

Shipping Terms FOB(Free on board) /DESTINATION

Our reference: 2021-0298

Your person responsible: TORY GUNSOLLEY

Your reference: 2021-0298

Agreement between City of Houston and APV Redevelopment Corp to provide financing of a portion of the cost for acquisition and reconstruction of an affordable housing community for seniors.

Item	Quantity	UM	Material # / Description	Unit Cost	Extended Cost
10	1.00	AU		25,000,000.00 / AU	25,000,000.00

99884 REAL ESTATE (INCL. B
2100 Memorial

Release Order against contract 4600016636 Item 00010

04/20/2021 AYD

2100 Memorial $25,000,000.00

Independent senior living community will be demolish the existing 13-story building and full reconstruction of all 197 units over a one-story podium to elevate all inhabitable floors.

Gross Price USD 1 AU 1.000 25,000,000.00

25,000,000.00

*** Item partially delivered ***

Expected value of unplanned services: 25,000,000.00

CITY OF HOUSTON
HCD Purchasing Unit 3200

SRO NUMBER MUST APPEAR ON ALL PAYMENT AND DELIVERY CORRESPONDENCE

POSSIBLE DUPLICATE COPY DO NOT DUPLICATE SHIPMENT OR SERVICE

SERVICE RELEASE ORDER

Delivery Date: 12/31/2021

Total **** **USD** **25,000,000.00**

2021-0298 ORD PASSED 5/28/2021; AGMT
EXECT'D MAYOR 5/18/2021;CS 5/18/2021

APV REDEVELOPMENT CORPORATION JOINED BY 2100 MEMORIAL REDEVELOPMMENT LP A TEXAS LIMITED PARTNERSHIP
LOAN AND SUBRECIPIENT AGREEMENT TO PROVIDE A LOAN OF HURRICANE HARVEY CDBG DISASTER RECOVERY FUNDS FO THE CITY'S HAVEY MULTIFAMILY PROGRAM, TO PARTIALLY FINANCE THE ACQUISTION AND RECONSTRUCTION OF 2100 MEMORIAL DR APARTMENTS, A 197 UNIT SENIOR AFFORDABLE RENTAL HOUSING COMMUNITY LOCATED AT 2100 MEMORIAL DR.
ORDINANCE 2021-0298 PASSED 4/28/2021
CS DATE 5/18/2021

NOTICE -- This is a contract release order against the contract referenced herein. The terms and conditions in the referenced contract are hereby incorporated into this contract release order as if set forth in full text. All work performed pursuant to this contract release order shall be performed in strict accordance with the referenced contract's statement of work/scope of services.

I hereby certify a certificate of the necessity of this expenditure is on file in this department.

I hereby certify that the expenditure for the above goods has been duly authorized and appropriated and that sufficient funds are available to liquidate same.

Mayor **Chief Procurement Officer** **Controller**

4600016636
2021-0298

LOAN AND SUBRECIPIENT AGREEMENT

Dated MAY 18, **2021**

By and between

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

and

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

and

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

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LOAN AND SUBRECIPIENT AGREEMENT (CDBG-DR 17 Transaction)

The parties to this Loan and Subrecipient Agreement (this "Agreement") are the **CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas ("City"), and **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation ("Borrower"), and is joined herein by **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership ("Owner").

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

Borrower, City and Owner hereby agree as follows:

SECTION ONE
BACKGROUND

A. Borrower has requested and this Agreement provides for a loan to be made from the City to the Borrower in the maximum principal amount of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00) ("Loan Amount") ("City Loan" or the "City's Loan"). The City's Loan will provide for the rehabilitation, reconstruction, acquisition and/or construction of replacement affordable housing that was damaged or destroyed by Hurricane Harvey, and will serve a Low and Moderate Income ("LMI") benefit by providing or improving residential structures to be occupied by households qualifying for LMI ("LMI Persons" or "City's LMI Persons"). The City Loan will be advanced in two tranches. The first tranche ("Tranche 1") in the amount of EIGHT MILLION AND NO/100 DOLLARS ($8,000,000) will be advanced for acquisition, abatement and demolition costs for the Project and the second tranche ("Tranche 2") in the amount of SEVENTEEN MILLION AND NO/100 DOLLARS ($17,000,000.00) will be

advanced for costs associated with the construction of the Project and both Tranche 1 and Tranche 2 shall be advanced in accordance with and subject to the requirements herein set forth.

B. Funding for the City Loan is being provided to the City pursuant to 2017 Community Development Block Grant ("CDBG") Disaster Recovery program funds ("CDBG-DR17 Program") awarded by the United States Department of Housing and Urban Development ("HUD") through the Texas General Land Office ("GLO") under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56) and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-23), and the requirements published by HUD under 83 Fed. Reg. 5844 and 83 Fed. Reg. 40314, and is subject to the terms and conditions of that certain Contract Numbered 19-147-001-B 489 ("2019 Subrecipient Agreement") and 21-134-000-C788 ("2021 Subrecipient Agreement"), as may be amended from time to time ("GLO Contract") between GLO and the City and to which the Borrower is a subrecipient to the extent of funds advanced under this Areement. Pursuant to thc GLO Contract, the provisions of that certain City of Houston Local Action Plan – Hurricane Harvey Housing Recovery passed and approved by City Council of the City of Houston ("City Council") by Ordinance No. 2018-518 on June 27, 2018, as amended by that certain State of Texas Plan for Disaster Recovery: Hurricane Harvey Round 1, as amended from time to time (as so amended, the "Action Plan"), Federal regulations, as published in 24 C.F.R. Part 570 ("CDBG Regulations"), the State of Texas CDBG Housing Rules, as published in 10 TAC Chapter 60; the City's Harvey Multifamily Program Guidelines, as amended from time to time, and other related administrative rules and regulations issued by the Federal Government or State of Texas that are applicable to rental activities funded under the CDBG-DR17 Program ("Other Requirements") are hereby included or incorporated in this

Agreement and sub-agreements, as applicable. Furthermore, Borrower and Owner have been notified that the information related to the development, its operations and its residents are covered under Chapter 552, Texas Government Code, the Texas Public Information Act, unless a valid exception exists, and Chapter 2306 of the Texas Government Code. Borrower and Owner acknowledge that on the date HUD approves the eighth amendment to Action Plan, the City's 2019 Subrecipient Agreement shall automatically terminate and the 2021 Subrecipient Agreement will become effective to govern the Agreement from that date forward.

C. The term of the City Loan shall commence on the Closing Date and shall mature on the last day of the Affordability Period (as same may be extended). Until Project Completion Borrower shall have no obligation to make payments on the City Loan. Following Project Completion the outstanding principal balance of the note shall accrue interest at the rate of one percent (1%) simple interest per annum. From Available Cash Flow, Borrower shall pay an annual installment equal to the lesser of (i) one percent (1%) simple interest annually on the outstanding balance of the City Loan plus accrued unpaid interest, if any, or (ii) fifty percent (50%) of Net Cash Flow. The annual interest payment or non-payment of such interest shall be accompanied by evidence acceptable to the Director documenting Net Cash Flow or lack of sufficient Net Cash Flow. Unpaid interest will accrue and will be payable from future Available Cash Flow. For purposes of this provision Available Cash Flow shall mean 50% of Net Cash Flow, defined as follows:

Net Cash Flow shall mean all income and revenues actually received by Owner from the lease of the Project Units and other improvements, and all other income and revenues actually received by Owner in connection with the Project, excluding and deducting therefrom all (1) Operating Expenses including any debt service payments related to the Senior Loan (but not any subordinate

loans); (2) security, pet or cleaning deposits, if any; (3) payments from the Replacement Reserve or from Operating Reserves; (4) payments or reimbursements from insurers or other third parties and used or to be used for restoration, repair or remodeling of any of the Project Units or other improvements; (5) capital contributions, grants, proceeds of any permitted sale, transfer, exchange, refinancing or other disposition or encumbrance of all or a portion of the Project; (6) condemnation proceeds and awards in place of them; (7) tax reduction or abatement proceeds (8) City Loan proceeds; (9) deposits made to operating reserves and to the replacement operating reserves; (10) payments of the deferred developer fee; (11) costs of residential services; (12) social services fees; and (13) any tax credit adjustments, any asset management fees due to either the Tax Credit Investor to the extent allowed under the approved Final Project Budget and loans from the limited partner of Owner (to the extent the repayment of any such loan (as) is not secured by the Project, and (b) is made for the purposes of covering assumed tax liability, tax credit shortfalls, and operating deficits under the Approved Final Project Budget of Owner for the applicable year and not for the purposes of facilitating distributions to the partners of Owner).

Provided that no Default then exists and subject to the Director's consent and the conditions of this Section, Borrower may, at its option, extend the Term of this City Loan for a maximum of three (3) successive renewal periods of five (5) years each (the "Renewal Periods") by written notice to the City of Borrower's desire to renew the City Loan (the "Renewal Notice") which Renewal Notice shall be given no earlier than ninety (90) days prior to the expiration of the then current Term and no later than thirty (30) days prior to the expiration of the then current Term (as it may have previously been extended). For each Renewal Period, Borrower will pay the City a fee equal to one percent (1.0%) of the then outstanding balance of the City Loan which is a good faith estimate of the additional legal fees, monitoring costs and other expenses to be incurred by the

City as a result of such extension and which sum must be paid simultaneously with the giving of the Renewal Notice. The extension option may only be exercised as to one Renewal Period at a time. (For clarity purposes, the second extension option may be exercised no earlier than ninety (90) days prior to the expiration of the first Renewal Period and will not be available if the first extension option is not exercised and the third extension option may be exercised no earlier than ninety (90) days prior to the expiration of the second Renewal Period and will not be available if the first and second extension options are not exercised.) As a condition to each such extension, the Affordability Period must be extended to cover the applicable Renewal Period, and the parties shall execute a written extension agreement and any other documentation which may be required to extend the City Loan, the Affordability Period and the Restrictive Covenants for the Renewal Period in form and substance reasonably acceptable to the City and Owner. In addition, as a further condition to the renewal, (i) Borrower shall provide the City with a title company endorsement to the City's loan policy of title insurance for such extension under Texas Title Insurance Procedural Rule P.9.b.3 (or the equivalent), and (ii) the Project must pass the inspection of the City to ensure compliance with the Minimum Property Standards as the same are revised from time to time and if necessary, the Borrower shall cause Owner and Owner shall additionally make all necessary repairs to bring the Project into compliance. If Borrower requests an extension, the City may also, as a condition of renewal, require that the Replacement Reserve Account(s) be collaterally assigned to the City, subject, however to the Senior Lender's interest in the Replacement Reserve Account(s) under the Senior Loan Documents.

D. No payment of principal shall be payable under the City Loan except (and subject to the next sentence) in the event of Borrower's or Owner's Default of its obligations or representations and warranties under (a) this Agreement, (b) the terms of the Note, the Collateral

Note or any security or other Loan Documents securing or evidencing the City Loan, and/or (c) the City's Restrictive Covenants, provided, however, the Director, in his or her sole discretion, may waive in full or in part any requirement of this sentence. Upon the Maturity Date, if no Default has occurred which remains uncured, the amount of the City's Loan which remains unpaid, if any, shall be deemed paid. In the event the Director elects to accelerate payment of the Note and declare that all sums under the City Loan are immediately due and payable upon the declaration by the Director of a Default under (a) this Agreement, (b) the terms of the Note or other documents securing or evidencing the City Loan, (c) the City's Restrictive Covenants, (d) the terms of the Owner Loan Agreement or the terms of any of the Owner Loan Documents, or (e) the Collateral Assignment (Owner Loan), the principal balance of the City Loan together with accrued but unpaid interest thereon shall become immediately due and payable.

E. Borrower's obligations to the City under this Agreement, including, but not limited to repayment of the City's Loan as evidenced by the Note, will be secured by, among other things, the Collateral Assignment (Owner Loan) in favor of the City and the Owner Loan Documents. In furtherance of the foregoing, Borrower and Owner shall execute and deliver any instruments, documents and/or agreements necessary to create or perfect the security interests referenced hereunder.

F. Borrower shall loan the proceeds of the City Loan to Owner pursuant to the Owner Loan Agreement which has been or will be approved by the Director, for the Owner Loan from Borrower to Owner. Owner shall use the proceeds of the Owner Loan for the payment of the costs to acquire, abate, demolish and rehabilitate, reconstruct, construct or replace rental housing to be known as 2100 Memorial Drive Apartments, located in Houston, Harris County, Texas 77007. The Land on which the Project is located is described in Exhibit A attached to this Agreement.

The purpose of the Project is to house the City's LMI Persons in compliance with the affordability agreements set forth in this Agreement and in the Restrictive Covenants.

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

H. To secure the City Loan, Borrower will execute a Deed of Trust, Security Agreement and Financing Statement covering the Project and collaterally assign the Owner Loan and the Owner Loan Documents pursuant to the Collateral Assignment (Owner Loan) by Borrower in favor of the City covering the Owner Loan, the Leasehold Deed of Trust Security Agreement and Financing Statement executed by Owner covering Owner's leasehold interest in the Project and the other Owner Loan Documents.

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

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

K. Borrower and Owner shall comply and shall cause their contractors to comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") programs as set out in Chapter 15, Article V of the City's Code of Ordinances. Borrower and Owner shall make Good Faith Efforts as described by the City's Office of Business Opportunity ("OBO") policy attached

hereto as **APPENDIX 9**, to award subcontracts or supply agreements in at least 34% of the Loan Amount to MWSBEs. Borrower and Owner acknowledge that they have reviewed the requirements for Good Faith Efforts on file with the OBO and shall comply with them.

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

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

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

3. Within five (5) business days of execution of this Subcontract, the prime contractor and [MWSBE Subcontractor] shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the City's Code of Ordinances, together with the mailing address and telephone number of such agent.

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

L. Borrower and Owner agree to abide by the conflict of interest provisions at 24 C.F.R. § 570.611, 2 C.F.R. § 200.317 and 2 C.F.R. §200.318 and furnish conflict of interest disclosure forms if so required by the Director. Borrower and Owner agree to comply with the following provisions required by HUD, if applicable, or the GLO as a condition of the GLO approval of the Project for fair housing and affirmatively further fair housing purposes:

1. Borrower and Owner shall implement all noise and flood hazard and other mitigation action required or at the City's sole discretion, recommended as a result of the environmental review conducted pursuant to 24 C.F.R. Part 58 (the "Environmental Review"), including any required conformance with HUD elevation requirements (e.g., elevating or otherwise protecting ground level parking and storage areas) or flood-control measures (collectively, "Environmental Mitigation"). Borrower and Owner shall also comply with all applicable insurance and survey requirements as set forth in Section Three, Paragraph 3.13 and Section Six, Paragraph 6.25 and **Appendix 2** with only such modifications as may be specifically approved by the City.

2. The Borrower and Owner shall implement the Affirmatively Furthering Housing Requirements ("AFHR Requirements") and the Authority to Use Grant Funds ("AUGF") of Section Eighteen, Paragraph 18.22.

M. If the Loan Proceeds do not cover all of the costs of the Project, Owner shall have obtained at the time of Closing a firm commitment for the funding of the remaining acquisition costs (if applicable) and the construction costs to repair, demolish, renovate, construct and/or reconstruct the Project (collectively, together with the Senior Loan the "Other Financings"), all of which combined with the Loan Proceeds, total at least the amount required by the Approved Final Project Budget ("Final Project Budget"). The Approved Final Project Budget shall be in form and

content approved by the Director and attached hereto in the Exhibits to this Agreement. In any case, Owner shall be responsible for funding or obtaining funding for any costs or expenses of the Work, other Project cost under the Final Project Budget or otherwise payable under this Agreement to the extent not covered by the Loan Proceeds.

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

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

P. Any property management fee, asset management fee or other similar fee ("Property Management Fee") is limited to no more than five percent (5.0%) in the aggregate of the Project's gross annual income. An additional one percent (1.0%) in the aggregate of the Project's gross annual income may be paid as an additional Property Management Fee from any Net Cash Flow remaining after payment of sums owed on the City Loan.

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

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

1. Schedule ("Schedule") setting forth definitions.

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

(a) the City's MWSBE programs to which the Owner's contractors and subcontractors are subject;

(b) insurance to be maintained by the Owner and also to be contained in the Approved Construction Contract and other Construction and Supply Contracts

(c) Release and Indemnity provisions to be to be contained in the Approved Construction Contract and other Construction and Supply Contracts;

(d) Construction Contract Requirements including bidding requirements (if applicable);

(e) the Monitoring Forms to be used by Owner and Borrower;

(f) Applicable Law;

(g) the Lobbying Certificate;

(h) the Debarment Form;

(i) the Survey Requirements;

(j) Property Condition Assessment requirements, if applicable;

(k) Multifamily Relocation Requirements, including related forms;

(l) Appraisal Requirements including sample Agreement for Appraisal Services;

(m) GLO Lien Waiver;

(n) Minimum Property Standards; and

(o) City of Houston Workforce Protection Requirements.

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

(a) the metes and bounds or legal description of the Land;

(b) commitments evidencing "Other Financings", if any; and

(c) the Preliminary Project Budget.

(d) Scope of Work; and

(e) Construction Schedule.

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

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

T. The recitals and statements contained in this Section One shall be incorporated into this Agreement, and Borrower and Owner confirm, agree and acknowledge that the information contained in this Section One is true and correct in all material respects and, to the extent that any of the subsections contained in this Section One contain covenants or agreements of Borrower and/or Owner, Borrower and Owner hereby covenant and agree to comply with the terms

therewith. Borrower and Owner further agree to comply with all laws and other requirements contained in the Appendices.

SECTION TWO
REPRESENTATIONS AND WARRANTIES

Borrower and Owner hereby represent and warrant, and such representations and warranties shall be deemed to be continuing representations and warranties during the entire Term of this Agreement, and so long as the City shall have any commitment or obligation to make any disbursements of the Loan Proceeds hereunder, and so long as all of or any part of the City's Loan remains unpaid and outstanding under any Loan Document (but only to the extent the City Loan has not been deemed repaid pursuant to the terms of this Agreement or the Note), as follows:

2.1. Ownership and Use of Land. Borrower holds or will hold either at the time of Closing or as a result thereof fee simple title in and to the Land located in Houston, Harris County, Texas, having an address of 2100 Memorial Drive, Houston, Harris County, Texas 77007 and more particularly described on **EXHIBIT "A"**, subject however, to the Permitted Encumbrances (as defined in the Fee Deed of Trust) and Owner holds or will hold leasehold title in and to the Land pursuant to the Ground Lease of the Land between Owner and Borrower, subject however, to the Permitted Encumbrances (as defined in the Leasehold Deed of Trust). Owner shall promptly disclose to the Director if Owner has acquired or leased the Land from Borrower; or any officer, director, employee, partner, company or individual of, related to or affiliated with Borrower or Owner. The HHA shall hold at the time of Closing fee simple title to Land subject to the Ground Lease.

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

information provided and disclosed to the City, is true and correct in all material respects as of the date hereof.

2.3. Taxes and Assessments. There are no delinquent taxes, assessments, or other impositions on the Land or Project, or if there are any delinquent taxes, assessments, or other impositions on the Land or Project, same will be paid prior to or simultaneously with Closing of the City Loan. The Land or Project is currently exempt from all ad valorem taxes and has been exempt from said taxes in the five (5) years preceding the Effective Date of this Agreement. The Owner expects that the Land or Project shall continue to receive the same ad valorem exemption upon Final Closing.

2.4. Financial Capacity.

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

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

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

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

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

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

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

2.9. ***Legal Existence***. Borrower is a non-profit public facility corporation, duly created and validly existing and in good standing under the laws of the State of Texas. Owner is a limited partnership, duly created and validly existing and in good standing under the laws of the State of Texas.

2.10. ***Insurance Claims***. Borrower and Owner have provided the Director with true and correct copies of all insurance claims made or which Borrower and Owner plan to make (together with all supporting documentation) with respect to any damage to the Project within the last six (6) years including, without limitation, damage to the Project resulting from Hurricane Harvey. None of the Loan Proceeds will be used to pay for damages covered by any insurance claim or any insurance policy including delayed or future payments anticipated under insurance policies. No portion of the Loan Proceeds shall be utilized to satisfy any deductible under such insurance policies.

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

2.12. ***Conflict of Interest***. Neither Borrower nor Owner has a conflict of interest as prohibited by 24 C.F.R. § 570.611, 2 C.F.R. § 200.317 and 2 C.F.R. § 200.318. If required by the Director, Borrower and Owner shall furnish to the Director a conflict of interest disclosure form

(in effect at the time the form is required to be submitted to the Director), on or before the execution of this Agreement.

SECTION THREE
CONDITIONS PRECEDENT FOR CLOSING THE CITY LOAN

The conditions listed in Paragraphs A of this Section must be satisfied by the date of Closing of the City's Loan and the satisfaction of each of such conditions shall be a condition precedent to drawing funds from Tranche 1 of the City Loan. The conditions listed in Paragraphs B of this Section together with the Tranche 1 conditions (which should have previously been satisfied) and such other requirements as may be imposed by the City with respect to t drawing funds from Tranche 2 of the City Loan and the advance of funds thereunder must be satisfied on or before the earlier of (i) any advance of Tranche 2 of the City Loan, (ii) the closing of the Other Financing; or (iii) July 27, 2021. Both Tranche 1 and Tranche 2 must close prior to July 27, 2021. If Tranche I and/or Tranche 2 fail to close by July 27, 2021, the City reserves the right to reallocate the funds dedicated to the applicable Tranche(s) to another Project, and in such case, Borrower shall have no further right to have funding for the applicable Tranche(s) advanced. It shall be a Default under this Agreement if the Other Financing does not close by July 27, 2021.

A. Tranche 1 Requirements. The following items must be provided prior to the advance of funds from Tranche 1:

   a. Execution and Delivery of Engineer's Contract/and Assignment of Engineer's Contract:
   b. Approval of Construction Schedule and Drawdown Schedule;
   c. Approval of Plans, Specifications, and Drawings (Demolition Only);
   d. Funding Commitments;
   e. Priority of City's Restrictive Covenants;
   f. Approved Final Project Budget and Approved Final Construction Budget;
   g. Approved Demolition Contract
   h. Bonds (Demolition Only);
   i. Lobbying;
   j. Appraisal (Demolition Only);

k. Survey;
l. City's Owner's Title Policy;
n. m. City's Loan Title Policy (Full Loan Amount);Environmental
o. Environmental Indemnity Agreement;
p. Cost Reasonableness Analysis (Demolition Only);
q. UCC Search;
r. Termination of Original Lease Agreement;
s. Entity Documentation being deliverable at the Tranche 1 Closing with the exception that the Amended and Restated Partnership Agreement is to be delivered as part of the Tranche 2 Closing;
t. Demolition Contract and related contracts;
u. Assignment of Demolition Contract and Prime Subcontract (Demolition Only);
v. Ground Lease between the Owner and HHA;
w. Permits for demolition; and
x. Declaration of Subordination.

B. Tranche 2 Requirements. The following items must be provided prior to the advance of funds from Tranche 2:

a. Execution and Approval of Property Management Agreement;
b. Approval of Plans, Specifications, and Drawings (Construction of Improvements);
c. Approval of Financing Documents;
d. Intercreditor Agreement, Subordination and Funding Agreement;
e. Approved Construction Contract and Prime Subcontract for Project Construction;
f. Bonds (Construction of Project);
g. Utility Letters;
h. "Defects Warranty";
i. City's Loan Title Policy (updated to full loan amount);
j. Cost Reasonableness Analysis (Project Completion); Property Condition Assessment;
k. Tenant Selection Policy;
l. Affirmative Marketing Plan;
m. Assignment of Construction Contract and Prime Subcontract;
n. Assignment of Architect's Contract, Plans and Specifications, and Consent; Consent;
o. Execution and Approval of Architect's Contract;
p. Assignment of Property Management Agreement;
q. UCC Search Update;
r. Subordination, Nondisturbance and Attornment Agreement between HHA, Owner, Senior Lender and the City;

s. Appraisal (Full Project);
t. Permits for construction of Improvements.

C. The items listed above are more fully described in Sections 3.1 through 3.26 hereto and shall be delivered in accordance with Paragraphs A and B.

3.1. **Execution and Approval of Property Management Agreement**. The Owner and the Property Manager shall have executed the Property Management Agreement which shall have been approved by the Director and shall have provided the management plan for the Project which shall also be approved by the Director. The Property Management Agreement will be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender) as additional security for the repayment and performance of the City Loan pursuant to an "Assignment of Property Management Agreement" instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney. The Property Management Agreement may be amended from time to time with the Director's consent, which consent shall not be unreasonably withheld and shall provide that the Property Manager may be terminated by Owner if required by the Director.

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

3.3. ***Approval of Plans, Specifications, and Drawings***. The Director shall have approved the scope of the Work, any site plans, floor plans, wall sections, architectural, structural,

civil, HVAC, mechanical, electrical, plumbing, and landscaping plans, and any other applicable drawings (collectively, the "Approved Plans, Specifications, and Drawings") required for the construction of the Project according to the Approved Construction Contract, which Approved Plans, Specifications, and Drawings will also be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender) as additional security for the repayment and performance of the City Loan pursuant to the Assignment of Architect's Contract, Plans, Specifications, and Consent. The Borrower or Owner shall pay the City $5,000.00 for review of the Approved Plans, Specifications and Drawings and cost review.

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

3.5. ***Funding Commitments***. The sum of the City Loan, commitments for the Other Financings (if any), deferred developer fee, Net Operating Income, and any equity contributions for the Project shall be in at least the amount required to acquire the Land (if applicable), complete abatement, demolition and construction of the Project and allow operation of the Project in accordance with the Approved Final Operating Budget and the Approved Final Project Budget, according to the Approved Final Plans, Specifications and Drawings and the Approved Construction Contract. Borrower and Owner shall disclose any changes in the commitments for Other Financings and/or any changes in any equity contributions to the Project to the City as soon as practical, but in any event no later than five (5) business days after knowledge of such changes. The City's funding shall be subject to funding of all Other Financing (including without limitation, the Senior Lender Loan) in the order specified in the Approved Construction Schedule or in the Intercreditor Agreement.

3.6. ***Approval of Financing Documents***. The Director shall have approved the documents evidencing the Other Financings, if any and the Owner Loan Documents, which approval shall not be unreasonably withheld, delayed or conditioned.

3.7. ***Priority of City's Restrictive Covenants and Declaration of Subordination***. The City's Restrictive Covenants, once recorded in the Official Public Records of Real Property of Harris County, Texas shall have priority over any and all liens proposed to evidence or secure the Senior Loan and any Other Financings (including without limitation, any refinancings or refundings thereof subsequent to the Closing Date). Such priority shall be evidenced pursuant to the Declaration of Subordination executed by the City, Borrower, Owner and [Columbia Affiliate] (and/or any other lender or person providing any Other Financing to Borrower or Owner) and filed for record in the Official Public Records of Real Property, Harris County, Texas, on the Closing Date, in the form set forth in the Attachments or in a form otherwise approved by the City Attorney (the "Declaration of Subordination") and by the Intercreditor Agreement described in Section Three, Paragraph 3.8 below.

3.8. ***Intercreditor Agreement***. The lenders under any Other Financings (if any) and the Senior Loan as well as Borrower, Owner and the City shall have executed an intercreditor agreement (the "Intercreditor Agreement") in the form set forth in the Attachments, or in a form otherwise approved by the City Attorney, Senior Lender, and any other lenders, as applicable, which agreement shall provide for periodic estoppel certificates from the Senior Lender as to the balance and maturity date(s) of the Senior Loan and whether any defaults are outstanding under the Senior Loan and shall provide for reasonable notice of default of Owner under the Senior Loan to be provided to the City with a reasonable cure period unless the requirements are waived by the Director and the City Attorney, in their sole discretion.

3.9. ***Final Budgets***.

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

3.9.2. ***Approved Final Project Budget and Approved Final Construction Budget***. The Director shall have approved a detailed budget ("Approved Final Project Budget") for the Project which shall not vary from the Preliminary Project Budget unless such variance is approved in writing by the Director which approval shall not be unreasonably withheld, delayed or conditioned subject to applicable law and regulatory constraints. The Approved Final Project Budget shall include the acquisition costs (if applicable), the architectural and design costs, the approved final Construction Budget which shall include all costs to construct the Work and any other construction costs for the Project ("Approved Final Construction Budget") and all other costs necessary to complete the Project per the Approved Plans, Specifications, and Drawings and Approved Construction Contract. The Approved Final Project Budget and the Approved Final Construction Budget shall be on AIA forms or such other forms as the Director may require,

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

the City. The City may charge and Borrower or Owner shall pay $1,000.00 a month for construction inspections or review throughout the construction period.

3.10. Construction Contract and Related Matters.

3.10.1. Approved Construction Contract. Owner and Contractor (and Contractor and its prime subcontractor) shall have executed the Construction Contract approved by the Director ("Approved Construction Contract"), which Approved Construction Contract will be collaterally assigned to the City (subordinate, however, to the assignment to Senior Lender) as additional security for the City Loan pursuant to an "Assignment of Construction Contract" instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney ("Assignment of Construction Contract"). The Approved Construction Contract shall be a fixed price/stipulated sum or guaranteed maximum price contract which shall be consistent with the Approved Final Construction Budget. Fees, overhead and general conditions of the Contractor shall be indicated as a fixed dollar amount which shall be determined in a manner that does not exceed amounts that are commercially customary and reasonable for similar affordable multifamily development projects.

3.10.2. Bonds. For the demolition work and for the construction of the Project, Owner or Contractor (or the prime subcontractor with responsibility for the entire project) shall furnish (a) a performance bond, with dual obligee rider naming the City as an additional beneficiary, for the full amount of the construction, rehabilitation price or demolition as applicable ("Performance Bond"); (b) a maintenance bond to secure the Defects Warranty ("Maintenance Bond"); and (c) a statutory payment bond ("Payment Bond"). The surety upon any required bond must be on the current list, published by the United States Treasury Department, of acceptable sureties for federal bonds and must have an AM best rating of "A" or

better. The form of the Performance Bond, Maintenance Bond, and Payment Bond shall be as set forth in the Attachments or in other forms approved by the City Attorney. The Performance Bond, Maintenance Bonds and Payment Bond must be approved by the City attorney in its sole discretion.

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

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

3.12. ***Appraisal***. The Owner, at Owner's sole cost and expense, shall obtain an an "AS IS" Appraisal of the Land for Tranche 1 and an appraisal of the value of the leasehold interest in the Project together with any leasehold multifamily housing improvements to be constructed in connection with the leasehold interest or funded by the Senior Loan or the City Loan in connection with Tranche 2, which appraisals shall meet the definition of an appraisal under the URA at 49 C.F.R. § 24.2(a) (3), which shall be done in accordance with the requirements of the URA at 49 C.F.R. § 24.103, and which shall comply with the Appraisal Requirements ("Appraisal Requirements") in the Appendices. The appraisals shall be acceptable to the Director, shall be prepared by a qualified appraiser approved by the City and certified to the City.

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

3.14. **Title Commitments; Insured Closing Service Letters**.

3.14.1. ***City's Owner's Title Policy***. The Title Company shall issue at Borrower's or Owner's expense, in substance approved by the City Attorney, a Commitment to issue to the City an Owner's Policy of Title Insurance ("City's Owner's Title Policy") naming the City as Insured, which will provide in Schedule A of the City's Owner's Title Policy that the

estate or interest that is to be insured under the Owner's Policy is "the Restrictive Covenants dated _____, 20__ and recorded under Harris County Clerk's File No. #_____" with the only Schedule B Exceptions of the City's Owner's Title Policy, which will be allowed to be shown in the City's Owner's Title Policy being those which are acceptable to the Director, in his or her sole discretion.

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

(1) the Senior Loan,

(2) the City's Restrictive Covenants; and

(3) Schedule B Exceptions approved by the Director, in his or her sole discretion.

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

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

3.15. **Environmental**.

3.15.1. ***Director's Approval***. The Director shall have approved a "Phase I" (or "Phase 2", if the Director has required) environmental site assessment (and any updates

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

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

3.15.3 ***Flood Plains.*** The buildings in the Project may not be located in a Special Flood Hazard Area (including, without limitation, the 100 year flood hazard area) unless such location is approved by HUD, which approval may be obtained through and included in the

written "release of funds" authorization from HUD, as further described in Section Five, Paragraph 5.4.

3.16. ***Reserved***.

3.17. ***Reserved.***

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

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

3.20. ***Affirmative Marketing Plan***. The City will use affirmative marketing efforts, which will include development of an "Affirmative Marketing and Outreach Plan" based on HUD regulations to ensure the Project is affirmatively marketed to the public at large. The Affirmative Marketing and Outreach Plan shall ensure that outreach and communication efforts reach eligible LMI Persons from all racial, ethnic, national origin, religious, familial status, disability, and gender groups.

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

3.22. ***Purchase Agreement.*** Owner shall provide City with a copy of the Purchase Agreement for the Project.

3.23. ***Entity Documentation***. As a condition of closing Tranche 1, Borrower and Owner shall provide City with copies of (i) Owner's executed Partnership Agreement, together with all notes, guarantees and other instruments and agreements issued pursuant thereto; (ii) all corporate and company documents for Borrower, Owner's general partner or managing member, as applicable, and any Guarantor; and (iii) evidence of Borrower's, Owner's, Owner's general partner or managing member, as applicable, and each Guarantor's due formation, organization, good standing, existence and authorization to enter into this Agreement and the related Loan Documents (collectively, the "Entity Documentation"); provided, however, the Owner's Partnership Agreement shall be amended and restated and delivered prior to the Tranche 2 Closing and will be considered part of the Entity Documentation.

3.24. ***Utility Letters and Permits***. Borrower shall or shall cause Owner to provide the City will utility letters ("Utility Letters") from the appropriate utility providers evidencing that the Project has access to public water, sanitary and storm sewer, electricity, gas and other required utilities in quantities sufficient for the successful operation of the Project and which utilities shall enter the Project through adjoining streets or in accordance with recorded easements across private lands. Borrower shall deliver any permits required for the Tranche 1 demolition prior to the Tranche 1 Closing and any permits required for the construction of the Project prior to the Tranche 2 Closing.

*3.25.**Contracts***. Borrower shall or shall cause Owner to provide the City with all operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Project which the City, at its discretion, may require be assigned to the City together with an acknowledgement of the assignment by the counterparties thereto (each such assignment to be subordinate to the like assignments to Senior Lender).

*3.26. **Reserved.***

*3.27. **Execution and Approval of Engineer's Contract***. The Owner and the Engineer shall have executed the Engineer's Contract which shall have been approved by the Director; the Engineer's Contract and all plans and specifications related to the demolition will be collaterally assigned to the City (subordinate, however, to any assignment to Senior Lender) as additional security for the repayment and performance of the City Loan pursuant to an "Assignment of Engineer's Contract, Plans and Specifications, and Consent" instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney ("Assignment of Engineer's Contract, Plans and Specifications, and Consent").

*3.28. **Execution and Approval of Demolition Contract and Related Contracts***. The Owner and the demolition contractor shall have executed the Demolition Contract which shall have been approved by the Director; the Demolition Contract and all plans and specifications related to the demolition will be collaterally assigned to the City (subordinate, however, to any assignment to Senior Lender) as additional security for the repayment and performance of the City Loan pursuant to an "Assignment of Demolition Contract, Plans and Specifications, and Consent" instrument in the form set forth in the Attachments or in a form otherwise approved by the City Attorney ("Assignment of Demolition Contract, Plans and Specifications, and Consent"). Any other contracts required for demolition will be subject to the Director's approval.

3.29. ***Ground Lease***. The Owner and HHA shall enter into the Ground Lease for the Land which shall be in form and substance acceptable to the Director. The Owner's interest in the Ground Lease shall be collaterally assigned to the City (subordinate, however, to any assignment to Senior Lender) pursuant to the Leasehold Deed of Trust.

3.30. ***Subordination Nondisturbance and Attornment Agreement***. The Owner, HHA, City and Senior Lender shall enter into a Subordination, Nondisturbance, and Attornment Agreement which shall be in form and substance acceptable to the Director.

3.31. ***Subrecipient Requirements.*** As specified above, Borrower, as a subrecipient of the City, shall be subject to and agrees to perform the requirements of Appendix 16 hereof.

SECTION FOUR
CLOSING

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

4.1 ***Delivery and Execution of Documents***. Borrower, Owner and Guarantor as the case may be, must, concurrently with closing of the City's Loan, execute, or cause to be executed as applicable, and deliver to the City, together with any other documents, certificates, affidavits, policies and other deliverables required hereunder or under any of the Appendices hereto or otherwise reasonably required by the City including, but not limited to, the following ***provided however***, Items 7, 8, 10, 14, 15, 21-24, 27, 31 (as to Tranche 2 portion), 34 (as to Tranche 2 portion), 38-39 (as to Tranche 2 portion), 45, 46, 47-48 (as to Tranche 2 portion), , and 50 may be delivered at any time prior to the earlier of (i) the advancement and closing of Tranche 2 of the City Loan or (2) the closing of the Senior Loan:

1. the Borrower's Note;

2. Collateral Note, endorsed to the City;

3. the Leasehold Deed of Trust and Fee Deed of Trust;

4. the Financing Statements;

5. the City's Restrictive Covenants;

6. Collateral Assignment (Owner Loan);

7. the Assignment of Construction Contract and Prime Subcontract;

8. the Assignment of Architect's Contract, Plans and Specifications, and Consent;

9. Reserved;

10. the Assignment of Property Management Agreement

11. this Agreement;

12. Owner Loan Agreement;

13. the Environmental Indemnity Agreement;

14 Reserved;

15. the Intercreditor Agreement, Subordination and Funding Agreement;

16. the Construction Completion Guaranty executed by Guarantor;

17. the Certification regarding Lobbying;

18. the Affidavit of Use of Funds on the form required by the Director stating that the Loan Proceeds will be used by Borrower and Owner only for the purposes set forth in the Loan Agreement;

19. the Affidavit of No Commissions on the form required by the Director stating that as of Closing no commissions, fees or other payments of any kind have been made to Borrower, any general or limited partner of Borrower, or employee of Borrower, or any company or individual related to or affiliated with Borrower;

20. the Certification Regarding Debarment, Suspension and Other Responsibility Matters;

21. a copy of the fully executed Approved Construction Contract;

22. a copy of the fully executed Architect's Contract;

23. a copy of the fully executed Property Management Agreement;

24. a copy of the fully executed documents evidencing, guaranteeing, securing or otherwise pertaining to any of the Other Financings (except as provided in Item 26);

25. a copy of the fully executed Owner Loan Documents;

26. Letters of intent or commitment letters for the Other Financing;

27. a copy of the Approved Plans, Specifications and Drawings for the Project;

28. a copy of the Approved Construction Schedule;

29. a copy of the Approved Final Operating Budget including a rent roll or proforma projection;

30. a copy of the Approved Final Project Budget (including the Approved Final Construction Budget)

31. an Appraisal of the Project meeting the Appraisal Requirements ("AS IS" for Tranche 1 and "AS BUILT" for Tranche2);

32. a Survey of the Land meeting the Survey Requirements;

33. certificates or policies of the Borrower's and Owner's insurance required by this Agreement or by the Fee Deed of Trust, including flood insurance when required pursuant to all applicable federal, state, and local laws, rules, regulations and ordinances including, without limitation the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and the National Flood Insurance Reform Act of 1994, as amended, Chapter 19 (Floodplain) of the City of Houston, Texas, Code of Ordinances or as otherwise required by HUD, City ordinance or the Director;

34. the (i) Payment, (ii) Performance, and (iii) Maintenance Bonds (Bonds for demolition for Tranche 1 and Bonds for construction of Project for Tranche 2);

35. the City's Loan Title Policy, a Proforma Loan Title Policy, or a Commitment to issue the same, dated as of the Closing Date, in conformity with the requirements of this Agreement and the Insured Closing Letter together with UCC Search;

36. the City's Owner's Title Policy, a Proforma Owner's Title Policy, or a Commitment to issue the same, dated as of the Closing Date, in conformity with the requirements of this Agreement and the Insured Closing Letter;

37. evidence that all premiums in respect of such Title Insurance Policies have been paid;

38. Proof of compliance with Multifamily Relocation requirements, if applicable;

39. Cost Reasonableness Analysis (Tranche 1 for demolition and Tranche 2 for construction of Project);

40. Property Condition Assessment (if applicable);

41. Resolutions of Borrower authorizing the City Loan or other evidence satisfactory to the Director that Borrower has authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City Attorney ("Borrower's Resolutions");

42. Resolutions of Owner authorizing the Owner Loan or other evidence satisfactory to the Director that Owner has authority to enter into the transactions contemplated by this Agreement in a form acceptable to the City Attorney ("Owner's Resolutions");

43. Resolutions of Guarantor authorizing the Guaranty or other evidence satisfactory to the Director that Guarantor has authority to enter into the Guaranty in a form acceptable to the City Attorney ("Guarantor's Resolutions");

44. legal opinion(s) of counsel for Borrower, Owner and Guarantors addressing, without limitation the authority of the parties signing this agreement and the closing documents on behalf of the Borrower, Owner and the Guarantors and as to the enforceability of such documents in a form acceptable to the City Attorney ("Borrower's Counsel's Opinion");

45. the Owner's Affirmative Fair Housing Marketing Plan;

46. the Tenant Selection Policy;

47. the Entity Documentation and Owner's Partnership Agreement (Tranche 1 except that the Amended and Restated Partnership Agreement is due at Tranche2);

48. Utility Letters and Permits (Tranche 1 for demolition and Tranche 2 for construction);

49. Ground Lease

50. Subordination, Nondisturbance and Attornment Agreement;

51. Reserved;

52. Demolition Contract;

53. Assignment of Demolition Contract and Consent;

54. Engineer's Contract;

55. Assignment of Engineer's Contract and Consent.

56. Letter Agreement AFHR Requirements;

57. Declaration of Subordination;

58. all other financing and recordable documents required by other lenders and the City's Housing and Community Development Department, as applicable; and

59. such other information and documentation which may be required by the Director to evidence Borrower's satisfaction of the conditions required by the City to close the City Loan.

Items 1-20, 24-26, 32, 34-36, 41-44, 47, 49-51, 53, 55 and 56-58 listed above must be in form and substance acceptable to the Director and the City Attorney, in their sole discretion. Items 21-23, 27-31, 33, 37-40, 45-46, 48, 52, 54 and 59 must be in form and substance acceptable to the Director, in his or her sole discretion. In addition, as a condition of Closing, the City must have obtained Environmental Clearance and Release of Funds from GLO as further described in Section Five, Paragraph 5.4. The City has the right to also require the assignment of any contracts with respect to the operation of the Project and the acknowledgement of such assignment by the counterparties thereto (such assignments to be subordinate to the like assignments to Senior Lender).

4.2. Waiver of Conditions; Additional Conditions. The Director may, by written instrument, waive any of the conditions or requirements set forth in this Agreement as a condition precedent to or a requirement of closing of the City's Loan, provided that waiver of any condition

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

4.3.Escrow at Title Company. All or any part of the sums to be funded by the City pursuant to this Agreement may be disbursed to a title company or mortgage servicer approved by the Director, to be held in escrow for subsequent disbursement to Borrower and other authorized payees or for return to the City pursuant to the terms and conditions of this Agreement. Upon receipt of a payment or disbursement request from the City's Housing and Community Development Department, the Controller of the City is authorized to issue a check or warrant made payable to the order of the designated title company or mortgage servicer pursuant to this paragraph and to fund the obligations of the City under this Agreement.

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

4.5.Closing Deadline. Notwithstanding anything contained in this Agreement to the contrary, Borrower shall cause all conditions precedent to Closing both Tranche 1 and Tranche 2

to be satisfied on or before July 27, 2021 (the "Outside Closing Date"). Unless Closing occurs on or before the Outside Closing Date (unless the Director, in his sole and absolute discretion, consents to an extension of the Outside Closing Date), the Director may, without providing prior notice, terminate this agreement by written notice to Borrower and Owner, in which event the City's obligations hereunder shall automatically cease and be of no further effect or alternatively, reallocate the funds allocated to any unadvanced Tranche(s) or portion thereof to another Project in which case, the City shall have no further obligation to advance the reallocated Tranche(s) hereunder.

4.6 ***City Expenses.*** Borrower shall pay or cause Owner to pay all third party expenses incurred by the City whether or whether not the City Loan closes including, without limitation, any expenses incurred by the City for outside counsel (up to a maximum of $49,000.00).

SECTION FIVE
CITY AND FEDERAL FUNDING LIMITATIONS

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

5.2 ***No Liability for Interruption of Funding***. In the event that GLO or other applicable governmental agency (for whatever reason) instructs the City to cease funding of the City Loan , the City may do so without obligation to Borrower or Owner and without being liable to Borrower or Owner for any damages Borrower or Owner may incur as a result of such cessation in funding. The City shall give Borrower and Owner written notice of such instructions promptly upon

receiving such instruction, at which time, any and all of the City's obligations under this Agreement or any of the Loan Documents shall cease. In furtherance of the foregoing, in the event that the City provides Borrower and Owner with notice of interruption as contemplated in this Section Five, Borrower and Owner shall execute any releases or other documents or agreements that the City determines necessary to enable the City to reallocate all or a portion of funds that are available pursuant to this Agreement that have not been funded to Borrower.

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

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

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

SECTION SIX
COVENANTS OF BORROWER AND OWNER

Borrower and Owner agree as follows:

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

6.1.1 Use of Proceeds. Borrower shall cause Owner to, and Owner shall use the proceeds of the Owner Loan and the Other Financing only for items included in the Approved Final Project Budget. Further, proceeds of the City Loan (as distributed pursuant to the Owner Loan) shall only be used for hard construction or other allowable costs, acquisition costs, relocation expenses and work performed that is eligible for payment under the regulations applicable to the City Loan. No portion of the City Loan or the Owner Loan will be used to pay for damages to the extent covered and paid for by any FEMA reimbursement, SBA assistance, or any insurance policy including delayed or future payments anticipated under any insurance policy. Borrower covenants that the City Loan does not constitute a duplication of benefits to Owner within the meaning of Section 312 of the Stafford Act and the requirements of 76 Fed. Reg. 71060 as updated by 84 Fed. Reg. 28836 and 84 Fed. Reg. 28848.

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

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

6.2 Construction Matters.

6.2.1 Commencement and Completion of Work; Change Orders. No Work shall commence on the Project prior to the Closing of the City's Loan. Borrower shall cause Owner to, and Owner shall begin the Work within thirty (30) days after the Closing of the City's Loan, but the City shall have no obligation to fund any portion of the Loan Proceeds until the issuance of all City authorizations and required permits, including without limitation the Notice to Proceed to be issued by the City. Borrower shall cause Owner to, and Owner shall complete the Work in accordance with the Approved Construction Schedule but in no case later than the earlier of (i) twenty-six (26) months after the Closing of the City's Loan or (ii) the expiration date of the GLO Contract, time being of the essence (the "Approved Construction Period"). Any changes to the Approved Construction Schedule, Approved Construction Contract, Approved Construction Period, or the Approved Plans, Specifications, and Drawings must be submitted and approved in writing by the Director. Subject to waiver by the Director, neither Borrower nor Owner shall be entitled to receive any disbursements of the City Loan after the expiration of the Approved Construction Period.

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

6.2.3 ***Compliance with Approved Construction Contract***. Borrower shall cause Owner to, and Owner shall fully and timely perform Owner's obligations under the Approved Construction Contract as well as the Demolition Contract.

6.2.4 ***Written Agreements With Subcontractors***. Borrower shall cause Owner to, and Owner shall cause Contractor to enter into written agreements with each Subcontractor who does work on or delivers materials to the Project. These subcontracts, upon the request of the Director, shall be subject to review and approval by the Director; to the extent that the Director requires, subcontractors shall be required to execute assignment and subordination of liens in favor of the City.

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

6.2.6 ***Owner's Insurance Requirements***. Borrower shall cause Owner to, and Owner shall and shall cause its contractors to maintain insurance with waiver of subrogation

against the City, its predecessors, successors, assigns, legal representatives, and its former, present and future agents, employees and officers (the foregoing are collectively referred to herein as "City") and, except with respect to workmen's compensation, shall name the City as an additional insured party. The amounts, types, and other specifications of such insurance are described in the "Insurance Requirements" pages of the Appendices (although the Appendices contain the Insurance Requirements as of the Effective Date of this Agreement, the version of Insurance Requirements in effect for the City's General Conditions of Construction Contract at the date of Closing of the City's Loan shall supersede the requirements set forth in the Appendices during the Approved Construction Period). Borrower shall cause Owner to, and Owner shall also comply with all insurance requirements of any Senior Loan Documents. In the event of a conflict between the insurance requirements of the Senior Loan Documents and this Agreement, the stricter of the two requirements for each type of insurance shall control. Notwithstanding the foregoing, during any period of time when construction is ongoing, Borrower shall cause Owner to, and Owner shall cause builder's risk insurance to be maintained by Contractor for those buildings at the Project undergoing construction in coverage amounts not less than the total respective amount of City provided funds and the Senior Loan that will be allocated to Work on those buildings.

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

6.3 Reserved.

6.4 ***Reserved.***

6.5 ***Reserved.***

6.6 ***Inspections; Corrective Action.***

6.6.1 During construction, the Work shall be subject to inspection by the City, GLO or at the City's option, any Approved Inspectors. Until Project Completion, in connection with every requested draw on the City Loan, Borrower shall cause Owner to, and Owner shall provide the Director with an inspection report in form and substance acceptable to Director from the Approved Inspectors meeting the requirements of Section Three, Paragraph 3.9.2.

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

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

6.6.4 With respect to all of the City's and GLO's inspection rights (1) the City, GLO, Approved Inspectors and the City's authorized agents and independent contractors, and others acting on its behalf, shall have access to the Project at reasonable times for purpose of monthly inspections; (2) each new or renewal lease of a unit within the Project shall include a clause that permits the City's Approved Inspectors and GLO access to inspect units at reasonable times (except in an emergency, when the inspection may be at any time); (3) neither the City nor

GLO shall incur any liability to Borrower, Owner or any tenants as a result of such inspections; (4) the City does not guarantee the Work of the Contractor or any Subcontractor and the City shall not be liable in the event of the Contractor's or any Subcontractors' default, or for any damages caused by the Contractor, any Subcontractors, or their employees or agents.

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

6.7 Reserved.

6.8 Designated Units; Compliance With Affordability Requirements.

6.8.1 The Director has determined that the number of Designated Units for the Project covered by this Agreement shall consist of One Hundred (100) units, being at least fifty-one percent (51.0%) of the 197 total residential units in the Project, the location of which may float during the Affordability Period.

6.8.2 **Reserved.**

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

(a) Each of the Designated Units shall be rented or be available for rent only to the City's LMI Persons, being those households whose gross income does not exceed eighty percent (80%) of the Area Median Income ("AMI"), as determined by HUD.

(b) Designated Units shall be rent restricted based upon the following criteria:

(1) 10 of the Designated Units shall be restricted to households at rents that do not exceed thirty percent (30%) of AMI.

(2) 20 of the Designated Units shall be restricted to households at rents that do not exceed fifty percent (50%) of AMI.

(3) 70 of the Designated Units shall be restricted to households at rents that do not exceed sixty percent (60%) of AMI.

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

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

6.8.5 ***Reserved***.

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

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

monthly rent in accordance with the Affordability Requirements, and such maximum monthly rent shall be reviewed and approved by the Director (which approval shall not be unreasonably withheld) prior to the date that such rent becomes effective ("Approved Rents"). Any increase in the Approved Rents for Designated Units is subject to the provisions of the leases, in any event, and Borrower shall cause Owner to, and Owner shall provide tenants not less than thirty (30) days prior written notice before implementing any increase in Approved Rents.

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

6.11 Tenant Lease Requirements. Prior to the date that Owner enters into any new or renewal leases for Designated Units, the Director shall approve a form lease that shall be used for occupancy of the Designated Units. Owner shall not make any modifications to such form lease without the Director's prior written approval. Borrower shall cause Owner to, and Owner shall enter into leases in such approved form with each tenant of a Designated Unit. The term of each lease of a Designated Unit shall not be less than one year unless Owner and the tenant mutually agree otherwise.

6.12 ***Compliance Monitoring Fee.*** A compliance monitoring fee of $30.00 per Designated Unit (subject to upward adjustment annually as determined by the City) will be due and payable to the City.

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

6.13.1 ***Reserved.***

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

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

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

6.15.1 Borrower shall cause Owner to, and Owner shall follow the recordkeeping requirements set forth in this Agreement or required by the Director, including to establish and maintain such records as may be necessary to facilitate review and audit by City representatives (including, without limitation, the Director and City Controller) (collectively, the "City Representatives"), GLO or HUD of the City Loan in connection with the CDBG Regulations under

24 C.F.R. § 570.492 and 24 C.F.R. § 570.493. The City Representatives, GLO and/or HUD shall have the right to audit Owner's books and record and compliance with this Agreement upon reasonable notice to Owner.

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

6.15.3 Using the Monitoring Forms or other forms from time to time established for use by the Director for monitoring purposes of the Loan Proceeds or to document Owner's compliance with the requirements of this Agreement, Borrower shall cause Owner to and Owner

shall provide the Director with all monthly, quarterly or annual compliance reports as the Director requests.

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

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

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

6.16 ***Notice of Claims or Suits***. Borrower shall cause Owner to and Owner shall, give the Director prompt written notice of any causes of action, suits, or other proceedings filed or any claims made against the Project, Borrower, Owner, or Guarantor, or, to the extent that it would have a material adverse effect on the Project, and Borrower and/or Owner have notice thereof, any other persons involved in the implementation or administration of the transactions contemplated by this Agreement, but shall not be required to deliver any information that may be subject to attorney-client confidentiality.

6.17 ***Minority, Women and Small Business Enterprises***. For purposes of this Paragraph 6.17, the term "Owner" shall mean and include, collectively, Owner, its Construction Project

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

6.18 Transactions with Affiliates. Except as otherwise provided in this Agreement and/or in any of the other Loan Documents, during the Term of this Agreement or any of the Loan Documents, neither Borrower nor Owner shall enter into any transaction in connection with this Agreement with any director, officer, employee, partner, or affiliate of either Borrower or Owner without the prior written approval of the Director. If the Land for the Project was acquired by Borrower or Owner from any director, officer, employee, partner, or affiliate of Borrower or Owner, the sales price for the Land may not have been any greater than most recent assessed value for ad valorem tax purposes, or the value set out in an independent appraisal report.

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

6.20 ***HUD Section 3 Requirements***. If applicable, Borrower shall cause Owner to and Owner shall comply at all times with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) as set forth and supplemented in the City's Housing and Community Development Department's Section 3 Plan and associated documents. Borrower shall cause Owner to report Section 3 compliance in accordance with 24 C.F.R. Part 135 and 83 Fed. Reg. 5844. Section 3 requirements are applicable to Borrower and Owner if the assistance provided for in this Agreement exceeds $200,000.00, and to contractors and subcontractors for contracts or subcontracts that exceed $100,000.00.

6.21 ***Public Relations and Signage***. All news releases and other public relations efforts, including advertising (except for advertisements solely for the purpose of obtaining tenants for the Project) and signage, must be approved in advance by the Director (such approval not to be unreasonably withheld, delayed or conditioned), and must properly refer to the City's Loan by the City and the City's Housing and Community Development Department.

6.22 ***Expertise***. Upon request by the City, the City shall have the right to approve (such approval not to be unreasonably withheld, delayed or conditioned) Owner's intention to retain any person or firm for the purpose of constructing, leasing and managing the Project and Borrower shall cause Owner to, and Owner shall provide evidence of the expertise and competence of such persons and firms that Owner intends to engage for the purpose of constructing, leasing and managing the Project.

6.23. ***Compliance with Applicable Law.***

6.23.1 Borrower shall cause Owner to, and Owner shall acquire, repair/re-construct, lease, maintain and operate the Project, and conduct all activities under this Agreement in accordance with all applicable federal, state, and local laws, rules, regulations and ordinances including, without limitation, those included in the Appendices and specifically set forth in this Agreement, as they may be from time to time amended (collectively, the "Applicable Law") and

shall also comply with energy efficiency standards (Entergy Star, LEED, Enterprise Green ICC-700, and HUD CPD Green Building Checklist (if applicable)).

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

6.23.3 Borrower and Owner acknowledge and agree that all required lead-based paint (42 U.S.C. Sec. 4831(b)) and asbestos abatement will comply with Applicable Law.

6.23.4 Borrower shall cause Owner, and Owner shall cause the Project and the Work to comply with the requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (including, without limitation, low vision accessibility), the Architectural Barriers Act (42 U.S.C. §§ 4151-4157), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) ("Section 504"), and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time, the Texas Architectural Barriers Act, Tex. Gov't. Code Ann. § 469.001 et seq. (1994) and the regulations and guidelines promulgated thereunder, and Chapter 10, subsection 60 of the Texas Administrative Code and the regulations and guidelines promulgated thereunder ("Chapter 10") as all of the same may be amended and supplemented from time to time (collectively, "Accessibility Requirements"). Five percent (5%) of the total number of units at the Project (i.e. ten (10) units), disbursed throughout the Project, shall be designated accessible in accordance with Section 504 and Chapter 10 using the 2010 ADA Standards for Accessible Design, promulgated by the United States Department of Justice, found at 28 C.F.R. § 35.151 (2013) and 36 C.F.R. Part 1191, App. B and D (2013) (the "2010 ADA Standards") as modified by HUD. In addition, two percent (2%) of the units at the Project (i.e. four (4) units) shall meet the standards to accommodate the hearing and visually impaired in accordance with Applicable Laws (as defined herein).

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

6.24 ***Replacement Reserve and Operating Reserve***. In accordance with the Senior Loan Documents, but not later than the first (1st) anniversary following Project Completion, Borrower shall cause Owner to, and Owner shall establish with Senior Lender, or to the extent not funded

with the Senior Lender, a financial institution acceptable to the Director and Senior Lender in their sole and absolute discretion, and fund as an Operating Expense a "replacement reserve escrow account" ("Replacement Reserve Account") for the replacement of furniture, fixtures, and equipment used in connection with those units at the Project for which the Work has been completed and for repair of capitalized improvements, in an amount not less than the greater of (i) $300.00 per unit annually, increased by 3% annually, or (ii) the reserve required by the Senior Lender per Unit per annum. If the Senior Lender requires a Replacement Reserve Account meeting these requirements, no additional reserve shall be required by the City. The reserve shall be deposited in equal monthly installments on an amortized basis. (For example if the Project had 100 Units, the monthly payment would be calculated as follows: 100 Units x $300 ÷ 12 = $2,500 monthly escrow payment). In the event that the Senior Lender does not require a Replacement Reserve Account pursuant to the immediately preceding sentence, the City shall have the right to cause Owner to fund such Replacement Reserve Account, in an annual amount not less than $300.00 per unit, increased by 3% annually, in accordance with the terms of this Section 6.24. Unless a Default exists, Owner shall be entitled to utilize amounts in the Replacement Reserve Account as necessary, provided that Owner shall replenish the amount withdrawn by continuing to fund deposits to the Replacement Reserve Account in accordance with the preceding sentence. Any replacement reserve amounts required under the Senior Loan Documents may be applied toward satisfaction of the Replacement Reserve Account requirements in this Agreement. If the Replacement Reserve is not required by the Senior Lender, the Director may require that the Replacement Reserve Account and all amounts held therein shall be collaterally assigned to the City pursuant to a pledge and account control agreement in form and substance acceptable to the Director in his or her sole and absolute discretion. If the Replacement Reserve is required by the

Senior Lender, the City shall have a second lien priority interest in the Replacement Reserve Account and the funds contained therein. On an annual basis, Borrower shall cause Owner to, and Owner shall provide the Director with an accounting of the Replacement Reserve Account. If not required by the Senior Lender or Owner's Partnership Agreement, the Director may require Owner to establish an Operating Reserve for the Project at Project Completion on terms and conditions as approved by the Director.

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

6.26 Reserved.

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

6.28 Distributions Covenant. If the Project exceeds a debt service ratio of 1.5 to 1 on an annual (calendar year) basis, the available cash for distribution for such calendar year shall be limited to the cash available between breakeven (1:1 debt service ratio) and a 1.5 to 1 debt service ratio. Notwithstanding anything to the contrary contained in this Agreement, any distribution in excess of such amount shall entitle the Director to declare a Default hereunder without prior notice and opportunity to cure. For example: If the debt service on the Project was $100,000 per year and the available cash before payment of debts was $200,000, the Project would have a debt service ratio of 2:1. $100,000 of the cash would be used to pay debt service, $50,000 (only) would be

available for distribution and the remaining $50,000 would be reserved by Owner and promptly invested in the capital improvement of the Project or deposited in the Replacement Reserve Account. Cash flow in excess of a 1.5 to 1 debt service ratio shall not be available for distribution and shall be invested in the Project or deposited in the Replacement Reserve Account as provided above. Borrower and Owner covenant to notify the City in writing at least ten (10) days in advance of any distribution of Project income to Borrower's or Owner's partners, shareholders or members as applicable.

6.29 Modification Fees. In the event that a modification of this Agreement or any change in any City Loan terms, the financing parties, Owner or Borrower structure or ownership of the Property is required after Closing which requires the Director's or City Council's approval, Borrower shall be responsible for all costs in connection therewith together a fee of no less than $25,000.00 with the amount of the fee to be determined at the time of request.

6.30 Resiliency Design Requirements. The Project design must incorporate the following resilient building measures:

(a) Protection

- Wet Floodproofing
- Blackwater Valves

(b) Adaptation

- Elevated Equipment
- Elevated Living Space
- Window Shading
- Distributed Heating and Cooling

(c) Back-Up Measures

- Emergency Lighting

(d) Community

- Building Community Ties
- Creating Community Resilience Space
- Develop an Emergency Management Manual

(e) Green Building Standards

- ICC-700 National Green Building Standards (Bronze)

(f) Solar

- Solar Ready Design and Construction

(g) Electrical Vehicles

- Electrical Vehicle ready

(h) Green Infrastructure

- Infrastructure as outlined by Houston Incentives for Green Development

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

SECTION SEVEN
RESERVED

SECTION EIGHT
RESERVED

SECTION NINE
DISBURSEMENT PROCEDURES

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

are for Work that has been completed and which Work has been approved by the Director, and (iv) if for materials, are for materials purchased and stored on site and approved by the Director.

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

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

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

9.5 Drawdown Procedure. Borrower shall not request a disbursement of the Loan Proceeds except in accordance with the Approved Construction Schedule and Approved Final Project Budget and in accordance with the provisions of this Paragraph 9.5. When a disbursement

of Loan Proceeds is requested, Owner shall provide to Borrower for delivery to the Director (but in no event more often than once a month and for an amount of not less than $5,000) an application for the disbursement (in a form required by the Director) (the "Disbursement Request") together with supporting documentation required by the Director (which shall include but not be limited to invoices and draw requests submitted by Contractor, interim lien waivers using forms provided by the GLO attached hereto as **APPENDIX 13**, and monthly construction progress reports on a unit by unit basis for verification by a third party inspector or a representative of the City) and evidence of required permits. In addition to the other information required by the Director, the initial disbursement request shall include a copy of all required permits necessary to commence construction. If the Director objects to an item (or portion thereof) included in any Disbursement Request or if all required information has not been submitted, then the Director shall notify Owner within 10 business days of receipt of the applicable Disbursement Request of the Director's objection and shall thereupon be relieved of any obligation to make a disbursement for that item (or portion thereof) until such time as Owner cures the objection(s) to the satisfaction of the Director. If the Disbursement Request is otherwise complete (as determined by the Director) and provided no Default exists or event that with the passage of time or giving of notice would constitute a Default has occurred and is continuing, the City shall, within 30 calendar days following approval of Owner's request, fund the requested disbursement from the City Loan less any amounts for items to which the Director has raised an objection and that have not been cured and less any retainage; provided, however, that the City shall not be required to make a disbursement (other than the last disbursement) in an amount less than $5,000 nor shall the City be required to make more than one disbursement per month. With each draw, the Owner shall provide a down-date endorsement (T-3) to the City Loan Title Policy together with partial lien

releases from the Contractor and subcontractors for the Work performed through the date of the draw request.

SECTION TEN
DEFAULT AND REMEDIES

10.1 Default. The Director may declare a default ("Default") under this Agreement or any one or more of the Loan Documents upon the occurrence of any one or more of the following circumstances (and in all events, subject to the rights of Senior Lender under the Senior Loan Documents and Tax Credit Investor under Section 10.3 hereof):

10.1.1 Failure to Pay.

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

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

10.1.2 Breach of Affordability Requirements and/or Restrictive Covenants. If Borrower or Owner breaches (i) the Affordability Requirements in this Agreement or the parallel Affordability Requirements set forth in the Restrictive Covenants or (ii) any other covenant, condition, representation or warranty contained in the Restrictive Covenants and such breach in either case continues for thirty (30) days after written notice thereof from the City to Borrower and Owner.

10.1.3 Breach of Other Covenants or Conditions.

(a) Except for the breaches of covenants or conditions covered by Section Ten, Paragraphs 10.1.1 and 10.1.2 above, if Borrower or Owner fails, refuses or neglects to perform fully and timely any obligation, or breaches any covenant or condition (including any condition prior to or subsequent to the issuance of the City Loan) under this Agreement, or under any other Loan Document, and such failure continues for thirty (30) days after written notice from the City to Borrower and Owner, or, if the failure is not susceptible to cure within said 30-day period, such greater period of time (not to exceed sixty (60) days) as is necessary to cure such failure provided Borrower commences to cure such failure within said 30-day period and diligently works to cure such failure; provided, however that in the event that (i) any such cure periods would cause a violation to occur under Applicable Law or cause a recapture of the tax credits or (ii) any breach or failure of performance of a life safety requirement, such event shall be deemed a Default hereunder without any notice or opportunity to cure;

(b) Except for the breaches of covenants or conditions covered by Section Ten, Paragraphs 10.1.1 and 10.1.2 above, if Owner fails, refuses or neglects to perform fully and timely any obligation, or breaches any covenant or condition under any of the documents evidencing, securing or otherwise pertaining to the Owner Loan, and such failure continues for thirty (30) days after written notice from Borrower or City to Owner; provided, however that in the event that (i) any such cure periods would cause a violation to occur under Applicable Law or cause a recapture of the tax credits or (ii) any breach or failure of performance of a life safety covenant, such event shall be deemed a Default hereunder without any notice or opportunity to cure.

10.1.4 Breach of Representations or Warranties. If any representation or warranty made by Borrower or Owner in its application(s) for the City Loan or in any of the Loan Documents, or this Agreement, or the Restrictive Covenants is false or misleading in any material

respect, provided, however, that solely with regard to non-financial misrepresentations or warranties, Borrower and Owner shall have thirty (30) days after written notice to the Borrower and Owner from the City in which to take such action as may be necessary to cause the matter or thing represented to become true or not misleading; provided, however that in the event that any such cure periods would cause a violation to occur under Applicable Law or cause a recapture of the tax credits, such event shall be deemed a Default hereunder without any notice or opportunity to cure.

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

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

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

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

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

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

10.1.11 ***Liens and Other Encumbrances***. If any mechanics', materialman's or other similar lien or encumbrance is filed against the Project, or the fixtures, materials, machinery and equipment to be used in the Project or other collateral that secures the City Loan, and the same is not discharged (by payment, bonding, which may include payment bond furnished by contractor, or otherwise) within fifteen (15) business days following written notice thereof from the City to Borrower and Owner.

10.1.12 ***Change of Ownership or Management***.

(a) If all or any part of Owner's interest in the Project is transferred (excluding transfers of membership or partnership interests in Owner to or by the Original Tax Credit Investor (or any entity permitted pursuant to Paragraph 10.1.15) or by its members or partners holding less than forty-nine percent (49%) ownership interest in Owner, unless such interests being transferred are general partner or managing interests), sold or assigned, voluntarily or involuntarily, or there is a change of management of the Project, at any time within the Affordability Period, such transfer

of interest or change of management must first be approved in writing by the Director, which approval may be granted or withheld by the Director. In the case of a transfer of Owner's interest in the Project, the Director's consent, if any, shall not be effective unless or until the purchaser or transferee assumes in writing all obligations and covenants of Borrower and Owner under the Loan Documents in a form acceptable to the Director and the City Attorney; or

(b) If there is otherwise a change in control of Borrower in violation of this Agreement.

(c) There is a change in the Property Manager without Director's consent.

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

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

10.1.15 ***Removal of Owner's General Partner***. Notwithstanding anything to the contrary contained in this Agreement or the Loan Documents, the removal and/or replacement of Owner's general partner for cause in accordance with Owner's Partnership Agreement shall not require the consent of the City or Director, shall not constitute a default under this Agreement or

the Loan Documents or accelerate the maturity of the City Loan. The consent of the Director shall be required for the appointment of a new general partner, but if the Tax Credit Investor exercises its right to remove the Owner's general partner for cause, City will not unreasonably withhold its consent to the substitute general partner; provided however, the consent of neither the City nor the Director shall be required if the substitute general partner is an affiliate of the Original Tax Credit Investor. The substitute general partner shall assume all of the rights and obligations of the removed general partner of Owner hereunder.

10.1.16 ***Default Under Ground Lease.*** Owner shall default under the terms of the Ground Lease and such default shall continue beyond any applicable notice and cure period thereunder.

10.2 ***Temporary Non-Compliance Not a Default.*** Notwithstanding the foregoing or any other provision of this Agreement or any of the other Loan Documents to the contrary, neither Borrower nor Owner shall be in Default hereunder or thereunder if such Default occurs solely as a result of temporary noncompliance with Section Six, Paragraphs 6.8.1, 6.8.3 or 6.8.4, or comparable or similar provisions of this Agreement or any of the other Loan Documents, and such temporary noncompliance is caused by increases in incomes of existing tenants, provided that actions satisfactory to GLO and the City are being taken to ensure that all vacancies are filled with eligible tenants until the noncompliance is corrected. Without limiting the foregoing, existing tenants of Designated Units whose financial status during the term of the lease are found to be such as to no longer qualify such tenants as City LMI Persons, must pay as rent from the date any such tenant no longer qualifies as a City LMI Person, an amount equal to the lesser of the amount payable by the tenant under state or local law or thirty (30%) percent of the family's adjusted

monthly income, as recertified annually, but in no event shall more rent be charged than is allowed under Section 42 of the Internal Revenue Code.

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

10.4 ***Owner's Right to Cure.*** Anytime there is an event or condition described in Section 10.1 which, with the passage of time might become a Default, if the Project has received other financings from low income housing tax credits, Owner shall have the independent and contingent right to cure such event or condition during the same period of time as that provided to Borrower. A cure by Owner of any event or condition that, with the passage of time might become a Default, shall have the same effect as a cure of such event or condition by Borrower.

10.5 ***City's Remedies.*** Upon the declaration of a Default by the Director and the failure by Borrower or Owner or Senior Lender or Tax Credit Investor to cure same within a time period specified herein (if any), the Director may in his or her sole discretion: (i) terminate this Agreement; (ii) accelerate payment of the Note and declare that all sums under the City Loan are immediately due and payable; (iii) foreclose on the Project; (iv) cease funding any disbursements under the City Loan; (v) foreclose on the Collateral Note and/or (vi) take any other action authorized or available under this Agreement, any of the Loan Documents or under Applicable Law or in equity. In the event a Default exists, if the Director so chooses this remedy, the

outstanding deferred principal balance shall be immediately due and payable. Upon the occurrence and continuation of any Default hereunder, the deferred principal shall bear interest at a rate of the lesser of ten percent (10%) per annum or the maximum rate of interest permitted to be contracted for by Applicable Law ("Highest Lawful Rate"). Failure of Borrower or Owner to adequately perform under this Agreement may result in penalties including the possibility of disbarment from future GLO and City projects. In the event that the City elects to stop funding the City Loan upon the occurrence and continuance of a Default, the Borrower and Owner shall be obligated to continue and complete the Work at Borrower's and Owner's expense.

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

In the event that (i) cost savings are achieved in connection with the performance of the Work and not reallocated in accordance with Section Nine, Paragraph 9.4 or (ii) the Contractor or any Subcontractor selected to perform the Work on the Project makes a payment of damages to Owner for delays, defective workmanship or material, or for other items related to Work on the Project and such sums are not used by Owner to correct such defective workmanship or otherwise mitigate any damages related to Work on the Project resulting from such default by the Contractor or any Subcontractor, Borrower shall immediately cause Owner to and Owner shall pay to the City a portion of such cost savings or the sum received as payment of damages, to be applied against the principal balance of the City Loan . The amount of such savings or damages to be paid to the City and applied to the City Loan shall be equal to:

(i) $\frac{\text{(The total amount of the City Loan disbursed for Work) X (amount of cost savings realized or damages received)}}{\text{(The total Work cost)}}$

(ii) less any portion of the damages received that the Director determines are attributable to lost income from rent; and

(iii) less any portion of the cost savings realized or damages received that are used to pay Work costs approved by the Director in accordance with the Final Budget.

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

SECTION TWELVE
RESERVED

SECTION THIRTEEN
RESERVED

SECTION FOURTEEN
RELEASE AND INDEMNIFICATION

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

14.2 INDEMNIFICATION AGREEMENT. **EACH OF BORROWER AND OWNER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS,**

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

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

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF OWNER. FURTHER, THE COVENANTS MADE IN THIS PARAGRAPH 14.2 TOGETHER WITH ALL OTHER INDEMNIFICATION

REQUIREMENTS OF BORROWER AND OWNER SHALL BE JOINT AND SEVERAL OBLIGATIONS OF BORROWER AND OWNER.

SECTION FIFTEEN
NOTICE

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

TO THE CITY:	City of Houston c/o Housing and Community Development Department 2100 Travis, 9th Floor Houston, TX 77002 Attention: Director
With a copy to:	City of Houston Legal Department 900 Bagby, 4th Floor Houston, TX 77002 Attention: Section Chief, Disaster Recovery

With a copy to:	Housing and Community Development Department 2100 Travis, 9th Floor Houston, TX 77002 Attention: Asia Speights
TO BORROWER:	APV Redevelopment Corporation 2640 Fountain View Drive Houston, Tx 77057 Attention: Mark Thiele
	Coats Rose, P.C. 9 Greenway Plaza, Suite 1000 Houston, Texas 77046 Attention: Barry J. Palmer
TO OWNER:	2100 Memorial Redevelopment, LP 2640 Fountain View Drive Houston, Tx 77057 Attention: Mark Thiele
	Coats Rose, P.C. 9 Greenway Plaza, Suite 1000 Houston, Texas 77046 Attention: Barry J. Palmer
TO SENIOR LENDER:	Wells Fargo Bank, N.A. _____ _____
TO GUARANTORS:	New Affordable Housing Partners, LLC and SDK Interests II, LLC 1718 Peachtree St., NW Suite 684, South Tower Atlanta, Georgia 30309 Attention:
With a copy to:	Banks Law Firm, P.A. 2929 Allen Parkway, Suite 200 Houston, Texas 77019 Attention: Antoinette M. Jackson

SECTION SIXTEEN
RESERVED

SECTION SEVENTEEN
RESERVED

SECTION EIGHTEEN
MISCELLANEOUS

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

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

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

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

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

18.6 ***Severability***. In the event that any covenant, condition or provision of this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of the invalid covenant, condition or provision shall in no way affect any other covenant, condition, or provision,

provided that the respective rights and obligations of the parties contained in the valid covenants, conditions and provisions of this Agreement are not materially prejudiced.

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

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

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

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

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

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

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

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

18.15 ***Transfer of Property; Flood Insurance***. As applicable, during the term of this Agreement, Borrower shall cause Owner and Owner shall maintain flood insurance as required under the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 (42 U.S.C. § 4001 et seq. and 42 U.S.C. § 5154a), as amended, in accordance with **APPENDIX 2** hereto or as otherwise required by HUD, City ordinance or the Director. Provided, however, that if the Property is located within a 100-year or 500-year floodplain or Special Flood Hazard Area designated by FEMA, Borrower shall cause Owner and Owner must maintain flood insurance on the Property for the life of the Property, in accordance with 42 U.S.C. §4012a, and this requirement shall survive the expiration or earlier termination of this Agreement. Borrower and Owner understand and acknowledge that failure to maintain the required flood insurance shall result in ineligibility for any further federal disaster relief of any kind, including but not limited to CDBG disaster recovery assistance. If the Property is sold or transferred by Owner or any subsequent transferring owner, the applicable flood insurance requirements under this Section are transferred to the new Property owner. Owner or any subsequent transferring owner of the Property must notify the new owner in accordance with 42 U.S.C. § 5154a and this requirement shall survive

the expiration or earlier termination of this Agreement. Owner or any subsequent transferring owner of the Property may be subject to liability if it fails to provide the notice required by 42 U.S.C. § 5154a.

18.16 ***Consents and Approvals***. Any approval or consent required of the City or the Director under the Loan Documents is for the purposes of administering the City Loan for City's benefit only and does not constitute any type of warranty or guaranty to Borrower or Owner that the plans, specifications, contracts or items of a similar nature for which approval or consent is sought is free from error, in compliance with Applicable Law or fit for the Owner's purpose. Borrower and Owner acknowledge that neither the City nor the Director is an engineer or an architect and that Owner is required to rely on its own architect, contractors and engineers in performance and monitoring of the Work hereunder. To the extent that any condition or provision of this Agreement or any other Loan Document is subject to the approval or consent of the City or the Director and such consent is not expressly required to be "reasonable", such consent or approval may be granted or denied within the sole and absolute discretion of the City or the Director, as applicable. In all cases, any approval or consent required by the City or Director shall not be effective unless such consent or approval is in writing.

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

18.18 ***Mediation of Contractor Disputes.*** In the event that a dispute arises between Owner and any contractor or subcontractor or between any contractor and subcontractor with

respect to the Work or the Project, the Director shall have the right to require the disputing parties to conduct non-binding mediation to attempt to resolve such disputes to the extent that such mediation would not conflict with the requirements of the Payment, Performance or Maintenance Bonds. Such mediation shall occur within thirty (30) days of notice by the Director that a mediation is required. The Director may declare a default under the City Loan if any dispute referred to mediation is not resolved within sixty (60) days after submission to non-binding mediation. Each contract and subcontract for the construction of the Project shall contain mandatory non-binding mediation requirements in case of a dispute if mediation is required by the Director as well as the other requirements of **APPENDIX 3** hereto. Nothing contained in this Agreement is intended to require the City to be a party to or participate in any mediation proceedings.

18.19 Force Majeure. In the event that any party shall be delayed in or prevented from the performance of any act required under this Agreement by reason of an event of Force Majeure, the time for performance shall be extended by the number of days that performance was reasonably delayed by such event (not to exceed sixty (60) days unless otherwise agreed by the Director in writing) provided that such extension shall not be permitted if such extension results in the breach of the GLO Contract.

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

18.21 Zero Tolerance Policy for Human Trafficking and Related Activities. The requirements and terms of the City's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Borrower has reviewed Executive Order 1-56, as revised,

and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Borrower shall immediately notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Borrower or its subcontractors providing services or goods under this Agreement.

18.22 ***Additional AFHR and AUGF Requirements.*** Borrower and Owner are required to timely comply with the AFHR Requirements and the AUGF Requirements. As a condition of Closing, the parties shall enter into a letter agreement with respect to Borrower and Owner's obligations with respect to the AFHR Requirements on or before Closing. Borrower and Owner shall comply with the following AUGF requirements:

18.22.1 Contamination and Toxic Substances (24 CFR Part 50.3(i) & 58.5(i)(2)). Farmers Environmental Group performed an asbestos inspection on February 6, 2020 and found evidence of non-friable asbestos containing material (ACM) in black mastic associated with the flooring throughout through out the property. Although there is no known presence of friable asbestos with the potential to be an immediate airborne hazard, there is potential for the discovery of previously hidden or inaccessible ACM during demolition activities. Precautions should be taken to ensure a) proper handling and removal of all known and potentially discovered ACM on the Property prior to and during demolition; and b) full protection of workers and all other occupants of the construction site during demolition and reconstruction of the building. Contractors certified by the appropriate regulating authorities should be utilized for abatement of asbestos in preparation for and during demolition activities.

18.22.2 Flood Insurance and Floodplain Management. Flood insurance is required per HUD policy. The Project is in the 100-year floodplain (Zone AE) and outside the floodway per FEMA Flood Panel No. 48201C0670M, Effective Date 6/9/2014. Floodplain

management regulations are applicable, and all conditions of the 8-step process have been followed. Mitigation of floodwaters must include: (i) a 100,000-cubic-foot stormwater vault underneath the building that would be designed to address potential excess water; (ii) the Project must eliminate below-grade parking and must include a flow-through parking deck (and reducing the amount of enclosed and occupied building space in the floodplain); and (iii) The Project and all inhabitable space will be elevated 2 feet above the 500-year floodplain, reducing the amount of enclosed and occupied building space in the floodplain. In addition to these mitigation details, all other applicable federal, state and local requirements including but not limited to City of Houston Chapter 19 along with requirements of an emergency plan governing flooding must be followed.

18.22.3 Historic Properties. If historic properties are discovered or unanticipated effects on historic properties are found, work should cease in the immediate area; work can continue where no historic properties are present. Please contact the Texas Historical Commission's History Programs Division at 512-463-5853 to consult on further actions that may be necessary to protect historic properties.

18.22.4 Archeological Requirements. If buried cultural materials are encountered during construction or disturbance activities, work should cease in the immediate area; work can continue where no cultural materials are present. Please contact the Texas Historical Commission's Archeology Division at 512-463-6096 to consult on further actions that may be necessary to protect the cultural remains. If any human remains, funerary objects, or other evidence of historical or cultural significance is inadvertently discovered, Native American tribes (including, without limitation, the Tonkawa Tribe) will need to be contacted as appropriate to ensure proper disposal or to determine the items aren't theirs.

18.22.5 Noise Abatement and Control (Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24, CFR Part 51, Subpart B) The subject Property was determined to have noise levels over 65 decibels (dB), specifically, 68.887 dB at its quietest point (north) and 74.6699 at its loudest point (south), which is considered "Normally Unacceptable" based on the HUD guidelines. Noise mitigation will be required for incorporation during the rehabilitation activities of this Project to reduce interior noise levels to below 45 decibels. Confirmation that mitigation efforts successfully reduce interior noise level to below 45dB must be achieved using HUD's Sound Transmission Classification Assessment Tool (STraCAT). Various types of mitigation can be utilized in order to decrease the noise environment, especially in the more noise sensitive locations such as interior spaces and outdoor recreational areas. Most notable examples include when practicable, incorporating noise attenuation into the building materials during reconstruction so that interior noise levels that are below 45 dB are reached.

18.22.6 Relocation. The Uniform Relocation Act (URA) must be followed in ensuring that current occupants of the Property are fully accommodated as far as displacement is concerned and that they have adequate housing while temporarily relocated.

18.22.7 Recommended Best Practices.

- Clean Air Dust mitigation best practices are routine features of construction and is recommended for this Project.
- Endangered Species. A letter was sent to the Texas Parks and Wildlife Department (TPWD) for notification of the No Effect Determination, and while they responded with no

mandates for the Project, it is recommended to follow the guidance of the letter with regards to this Project to ensure best practices in this area.

18.22.8 Encouraged Recommendations:

- Avoid or minimize clearing of native shrubs and trees;
- The judicious use and placement of sediment control fence to exclude wildlife from the construction area;
- Erosion and seed/mulch stabilization materials that avoid
- entanglement hazards;
- Avoid using invasive species in seed mixes or plantings for revegetation or soil stabilization;
- Keep trenching and backfilling crews close together to minimize open trenches or excavations left open at any given time;
- Slow speed limits in the construction area to increase sight time and avoid harming of wildlife;

18.22.9 Migratory Birds.

- Vegetation clearing be scheduled outside of the general nesting season of March 15th to September 15th or the performance of nest surveys;
- Review of Federal Law: Migratory Bird Treaty Act TPW Code Sections 64.002 and 64.003 regarding protection of nongame birds and nesting.

18.22.10 Species of Concern

- Include the Cajun chorus frog, Strecker's chorus frog, and Woodhouse's toad species in any survey efforts as they are classified as species of greatest conservation need (SGCN);
- Precautions should be taken to avoid impacts to any rare species, natural plant communities or special features in the project area.

18.22.11 Natural Spaces and Quality of Life.

- Consider incorporating 'wildscape' features for Monarch and Pollinator Conservation;
- Incorporate pollinator habitat into landscaping;
- Advises against planting the non-native milkweed species black swallow-wort and pale swallow-wort and non-native tropical milkweed.

18.22.12 Data Reporting. Report encounters of protected and rare species to the Texas Natural Diversity Database.

18.22.13 Drainage/ Storm Water Runoff. The Project must include a stormwater vault underneath the building that would be designed to address potential excess water. This is a required part of the Project scope and will address drainage and stormwater runoff.

SECTION NINETEEN

AUTHORITY OF THE DIRECTOR AND MAYOR

19.1 ***Authority of the Director to Extend Time of Performance***. The Director may extend the time of performance for any of Borrower's or Owner's covenants or conditions set forth in this Agreement, including all exhibits and attachments, or the other Loan Documents two (2) times for up to six (6) months each by written notice to Borrower. After these two six (6) months extensions, the next extension must be obtained by formal amendment to this Agreement, approved by City Council. After the extension approved by City Council, the Director may extend this Agreement (as amended) or any applicable time period for up to two (2) additional six (6) month periods by written notice to Borrower and Owner, but any additional extensions thereafter must be approved by City Council. Director may not extend the Maturity Date of the City Loan or otherwise amend or extend any repayment obligations under the Note.

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

19.3 ***Authority of the Mayor to Execute Other Documents***. The Mayor shall have the authority, without further action by City Council, to execute all other documents contemplated by this Agreement, including all exhibits and attachments, or necessary or appropriate to effectuate this Agreement, or to protect the City's interests hereunder, including, without limitation, execution of the Intercreditor Agreement and Subordination Agreement. The Mayor shall have the authority, without further action by City Council and upon the recommendation of the Director and City

Attorney, to make changes to clarify, but not materially change, any provisions of this Agreement, including all exhibits and attachments, or other documents contemplated by this Agreement.

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

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

19.6 Refinance of Senior Loan. With the consent of the Director which consent shall not be unreasonably withheld, conditioned, or delayed, the Senior Loan may be refinanced upon its maturity (for an amount not to exceed to the remaining balance of the Senior Loan) and such refinanced loan shall retain first lien priority, except for the priority of the Restrictive Covenants. Notwithstanding anything to the contrary contained in the Loan Documents, Owner may refinance the Senior Loan at then-market financing terms without the prior consent of the City (the "Refinanced Indebtedness") so long as the following conditions are met: (i) the City Loan is not in Default at the time of the refinancing; (ii) the amount of the Refinanced Indebtedness does not exceed the then outstanding balance due under the Senior Loan and the Owner does not use any loan proceeds to take equity out of the refinanced property, (iii) the Owner's ability to repay the loan pursuant to the terms of the Loan Documents is not impaired, and (iv) the Director and the City Attorney shall have reasonable approval rights over the form and substance of the Refinance Indebtedness, subordination and intercreditor agreement. The City hereby agrees to subordinate the City Loan and all documents securing or evidencing the City Loan that were

previously junior to the Senior Loan to the new lender providing the Refinanced Indebtedness, but in any case, the Restrictive Covenants shall remain superior to the Refinanced Indebtedness.

SECTION TWENTY
USURY LIMITATIONS

No provision of this Agreement, the Note, or any instrument securing payment of or relating to the indebtedness of Borrower, shall require the payment or permit the collection of interest in excess of the Highest Lawful Rate. If any excess of interest in such respect is herein or in any other instrument provided for, or shall be adjudicated to be so provided for herein or in any other instrument, the provisions of this paragraph shall govern and neither Borrower nor any guarantor or endorser of the Note, or their respective heirs, personal representatives, successors, or assigns shall be obligated to pay such interest to the extent it is in excess of the Highest Lawful Rate. Any fees or other sums that under Applicable Law are deemed to constitute interest shall be treated as interest and taken into account in calculating the Highest Lawful Rate and all such fees or other sums so deemed interest shall be amortized, prorated, allocated and spread in equal parts over the full stated Term of the City Loan . It is the intention of the City and Borrower to conform strictly to the laws applicable to the City Loan, and should it be held that interest or other sums payable to the City under this Agreement, the Note, or any other Loan Document are in excess of the Highest Lawful Rate, the interest chargeable shall be reduced to the maximum amount permitted by law.

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

[SIGNATURE PAGES FOLLOW]

BORROWER:

APV REDEVELOPMENT CORPORATION, a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

OWNER:

2100 MEMORIAL REDEVELOPMENT, LP, a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company, the sole general partner

By: APV Redevelopment Corporation, a Texas non-profit corporation, its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

SEAL/ATTEST:

Pat Jefferson Daniel
City Secretary

CITY OF HOUSTON, TEXAS

Sylvester Turner, Mayor

Amanda Washington
5/18/2021

APPROVED:

Keith W. Bynam
Deputy Director
On Behalf of:
Tom McCasland, Director
Housing and Community Development Department

COUNTERSIGNED:

Chris B. Brown, City Controller

APPROVED AS TO FORM:

Senior Assistant City Attorney
LD# 0290001533001

COUNTERSIGNATURE DATE:

5-18-2021

SCHEDULE A

DEFINITIONS

Accessibility Requirements are defined in Section Six, Paragraph 6.23.4.

Affordability Period for the Project shall mean forty (40) years from Project Completion determined without regard to the Term of the City Loan, the Leasehold Deed of Trust, the Fee Deed of Trust or the transfer of ownership of the Project and as may be renewed or extended as provided herein. The Affordability Period includes a twenty (20) year HUD required affordability period as set forth in 83 Fed. Reg. 5844 and 83 Fed. Reg. 40314 (the "HUD Affordability Requirements"), in addition to a supplemental twenty (20) year affordability period required by the City. While the Owner's obligation to comply with the HUD Affordability Requirements and related obligations shall end at the close of the initial twenty (20) year affordability period, the Owner shall be required to comply with the City Affordability Requirements for the forty (40) years, as maybe extended, in accordance with this Declaration.

Applicable Law is defined in Section Six, Paragraph 6.23.1.

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

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

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

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

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

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

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

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

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

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

City is defined in the preamble to this Agreement.

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

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

City Loan or City's Loan shall mean the performance-based loan contemplated by this Agreement, in the maximum principal amount of $25,000,000.00 made by the City to Borrower for the purpose of financing eligible costs to construct the Project.

Closing or ***Closing Date*** shall mean the date on which the Loan Documents are executed and all of the other conditions set forth in Section Four of this Agreement have been satisfied for the applicable Tranche. Tranche 1 and Tranche 2 may be closed separately at different times subject to the requirements of this Agreement.

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

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

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

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

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

Declaration of Subordination shall mean that certain Declaration of Subordination attached hereto as an Attachment, or such other form approved by the City Attorney, which shall be executed by the City, Borrower, Owner and [Columbia Affiliate]r prior to Closing and filed for

record in the Official Public Records of Real Property, Harris County, Texas, in accordance with Section Three, Paragraph 3.7 hereof.

Deed of Trust shall mean and include the Leasehold Deed of Trust, Security Agreement and Financing Statement to be executed by Owner, granting to the Borrower a second lien on Owner's leasehold interest in the Project and the Fee Deed of Trust, Security Agreement and Financing Statement to be executed by Borrower granting to the City a second lien on Borrower's fee interest in the Project and which shall both be substantially in the form attached as Attachments to this Agreement, which lien will be assigned to the City pursuant to the Collateral Assignment (Owner Loan).

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

Designated Units shall mean those units in the Project which have been designated by Owner and approved by the Director as subject to all occupancy, rent, and affordability requirements of this Agreement and the Restrictive Covenants. The Designated Units shall remain in compliance with the requirements of this Agreement without regard to the term of any mortgage or the transfer of ownership, pursuant to the Restrictive Covenants.

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

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

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

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

Fee Deed of Trust shall mean the Fee Deed of Trust, Security Agreement and Financing Statement to be executed by Borrower, granting to the City a second lien on Borrower's fee interest in the Project

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

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

Force Majeure. A event of storm, flood, fire, earthquake or other acts of god, war, terrorism, sabotage, riot, insurrection or other civil disturbance, pandemic (not existing as of the date hereof), strikes, lockouts or other labor disturbances which renders a party temporarily incapable of performance. The term "Force Majeure" specifically excludes events related to COVID-19 or other global pandemics existing as of the date of Closing.

Governmental Authority shall mean shall mean the United States, each state, each county, each city, and each other political subdivision in which all or any portion of the Land is located,

and each other political subdivision, agency, or instrumentality exercising jurisdiction over the City, Borrower, Owner and/or the Land.

Guarantor shall mean, collectively, New Affordable Housing Partners, LLC and SDK Interests II, LLC.

Highest Lawful Rate is defined in the Section Ten, Paragraph 10.4 of this Agreement.

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

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

Intercreditor Agreement shall mean the agreement between the City, Owner, Borrower and Senior Lender and certain other parties described in Section Three, Paragraph 3.8 of this Agreement.

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

Leasehold Deed of Trust shall mean and include the Leasehold Deed of Trust, Security Agreement and Financing Statement to be executed by Owner, granting to the Borrower a second lien on Owner's leasehold interest in the Project.

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

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

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

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

Maturity Date the expiration date of the Affordability Period.

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

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

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

Operating Expenses shall mean all costs and expenses paid or incurred in connection with or relating to the ownership, maintenance or operation of the Project pursuant to the Approved Final Operating Budget and the Approved Final Construction Budget including, without limitation, debt service payments due under the Senior Loan.

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

Owner is defined in the Preamble to this Agreement.

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

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

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

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

Partnership Agreement shall mean the limited partnership agreement or operating agreement, as applicable, of the Owner.

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

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

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

(i) leasehold title to the Land is in Owner;

(ii) the Work has been completed to the satisfaction of the Director, and Owner has delivered to the City an AIA Affidavit of Completion signed by the Owner, Contractor and Architect for the Project in form and substance acceptable to the Director;

(iii) The City or the Approved Inspectors have conducted a Uniform Physical Conditions Standards inspection and all deficiencies have been remedied.

(iv) the Project in the Director's judgment complies with the requirements of the CDBG-DR17 Program and Requirements, the requirements of HUD, including but not limited to those set forth in the written "release of funds" authorization from HUD as further described in Section 5, Paragraph 5.4 and the Minimum Property Standard set forth in Section Six, Paragraph 6.10 of this Agreement);

(v) the final draw request has been made and the draw on the Loan has been disbursed for the Project including retainage;

(vi) delivery to the City evidence satisfactory to the City, reflecting the full payment of, and executed final, unconditional lien waivers from (or the liens have been bonded around) all contractors, subcontractors and others with respect to the construction of the Project;

(vii) delivery of Certificates of Occupancy (or their equivalent) issued by all appropriate Governmental Authorities for all portions of the improvements located at the Project;

(viii) the information necessary for the City to complete the Final Wage Compliance Report has been submitted by Owner and the City has completed the report and submitted it to GLO; and

(ix) A letter from the Architect or other qualified professional indicating that the Project is in compliance with all Accessibility Requirements.

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

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

Property Management Agreement shall mean the agreement between Owner and the Property Manager, in form acceptable to the Director, outlining the services to be performed by the Property Manager in relation to the Project. The Property Management Agreement shall be

collaterally assigned to the City pursuant to the Assignment of Property Management Agreement in form attached hereto as an Attachment or other form approved by the City Attorney.

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

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

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

Senior Lender shall mean Wells Fargo Bank, N.A., or other lender approved by the Director.

Senior Loan shall mean the construction loan in an original principal amount not to exceed the amount of $32,000,000.00 made by Senior Lender to Owner, secured by the Project, and subordinate to the Restrictive Covenants pursuant to the Declaration of Subordination. Prior to Closing, any increase to the Senior Loan amount that does not exceed 25% of the original amount may be approved in writing by the Director. Such approval must be in writing, and may be delivered by regular mail, electronic mail, or electronic or facsimile transmission. Subject to the Director's written consent, the Senior Loan may be refinanced, provided that the principal balance of the new loan shall not exceed the outstanding principal balance of the loan being repaid plus reasonable and customary closing costs. It is anticipated that the Senior Loan will be paid down and converted into a permanent loan in the amount of $11,700,000.00 which is specifically permitted hereunder and which is not subject to the requirements of the immediately preceding sentence regarding refinancing, except that any subsequent refinancing of such permanent loan is subject to the requirements of the immediately preceding sentence regarding refinancing.

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

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

State shall mean the State of Texas.

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

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

Tax Credit Investor shall mean NEF Assignment Corporation.

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

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

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

APPENDICES TO LOAN AGREEMENT

APPENDIX 1	Applicable Law
APPENDIX 2	Insurance Requirements and Release and Indemnity Provisions for the Approved Construction Contract and the Other Construction and Supply Contracts
APPENDIX 3	Construction Contract Requirements, including bidding procedures if applicable
APPENDIX 4	Survey Requirements
APPENDIX 5	Monitoring Forms including Compliance Forms for Complying with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701u)
APPENDIX 6	Lobbying Certificate (to be delivered on or before the execution of this Agreement)
APPENDIX 7	"Debarment Form"-- Certification regarding Debarment, Suspension, and Other Responsibility Matters (to be delivered on or before the execution of this Agreement)
APPENDIX 8	Reserved
APPENDIX 9	City's MWSBE, Section 3 and Labor Standards Requirements
APPENDIX 10	Property Condition Assessment requirements (if any)
APPENDIX 11	Multifamily Relocation Requirements, including related forms
APPENDIX 12	Reserved
APPENDIX 13	GLO Lien Waiver Form
APPENDIX 14	Minimum Property Standards
APPENDIX 15	City Workforce Protection Measures
APPENDIX 16	Additional Subrecipient Requirements

EXHIBITS TO LOAN AGREEMENT

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

ATTACHMENTS TO LOAN AGREEMENT

A. City's Restrictive Covenants

B. Borrowers' Note

C-1. Fee Deed of Trust

C-2. Leasehold Deed of Trust

D. Financing Statements

E. Collateral Note

F. Collateral Assignment (Owner Loan)

G. Construction Completion Guaranty

H. Declaration of Subordination

I. Intercreditor Agreement

J. Assignment of Demolition Contract and Related Contracts

K. Assignment of Property Management Agreement

L. Assignment of Architect's Contract, Plans and Specifications, and Consent

M. Assignment of Construction Contract

M-2. Assignment of Construction Contract (Prime Subcontract)

N. Environmental Indemnity Agreement

O. Form of the Performance Bond, Maintenance Bond, and Payment Bond

P. Owner Loan Agreement

Q. Assignment of Engineer's Contract

R. Subordination, Nondisturbance and Attornment Agreement

S. Declaration of Subordination

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

GENERALLY

The Acts and Regulations specified in the Texas General Land Office ("GLO") Contract No. 19-147-001-B489, provided, however, on the date HUD approves the City's new Subrecipient Agreement with the GLO (Contract No. 21-134-000-C788 also known as Action Plan 8), the City's prior subrecipient agreement shall automatically expire and the new subrecipient agreement will become effective to govern this Agreement from that date forward and shall become the GLO Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 115-123);

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

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

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

Community Development Block Grants (24 C.F.R. Part 570);

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

GLO Housing Guidelines;

State of Texas Plan for Disaster Recovery: Hurricane Harvey Round 1, as amended from time to time and posted on the GLO website (https://recovery.texas.gov/action-plans/hurricane-harvey/index.html); and

City of Houston, Housing and Community Development Department – City of Houston Build it Forward Housing Recovery Program: Harvey Multifamily Program Guidelines, as may be amended from time to time (available at https://recovery.houstontx.gov/hud-requirements-reports/#guidelines).

Guidance Documents: Uniform Administrative Requirements Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200); the Federal Registers; Hurricane Harvey Disaster Recovery Housing Guidelines issued by GLO – Community Development and Revitalization, as amended (available at https://recovery.texas.gov/local-government/hud-requirements-reports/housing-guidelines/index.html); CDBG-DR Project Implementation

Manual, as posted on the GLO website (https://recovery.texas.gov/files/hud-requirements-reports/implementation-manual/ch.-1---introduction.pdf).

CIVIL RIGHTS

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

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

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

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

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

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

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

LABOR STANDARDS

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

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

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

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

Federal Executive Order 11246, as amended; and

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

EMPLOYMENT OPPORTUNITIES

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

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

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

Federal Executive Order 11246, as amended.

GRANT AND AUDIT STANDARDS

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

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

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

Title 1 Texas Administrative Code § 5.167(c).

LEAD-BASED PAINT

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

HISTORIC PROPERTIES

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

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

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

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

ENVIRONMENTAL LAW AND AUTHORITIES

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

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

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

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

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

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

COASTAL ZONE MANAGEMENT

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

SOLE SOURCE AQUIFERS

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

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

ENDANGERED SPECIES

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

WILD AND SCENIC RIVERS

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

AIR QUALITY

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

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

FARMLAND PROTECTION

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

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

HUD ENVIRONMENTAL STANDARDS

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

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

ENVIRONMENTAL JUSTICE

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

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

SUSPENSION AND DEBARMENT

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

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

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

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

ACQUISITION/RELOCATION

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

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

The Protecting Tenants at Foreclosure Act of 2009.

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

FAITH-BASED ACTIVITIES

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

CONSTRUCTION AND INSPECTION

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

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

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

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

Green Building Standards at 83 Fed. Reg. 5844;

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

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

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

APPRAISAL

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

BROADBAND REQUIREMENTS

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

OTHER REQUIREMENTS

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

CITATIONS FOR THE SUBRECIPIENT -APPENDIX 1

Provisions	Federal Regulations*	Other Federal Regulations
1. National Objective Compliance/Eligibility	570.200(a)(1)+(2), 570.201–570.209, 570.506	
2. Scope of Work	570.503	
3. Time of Performance	570.503	
4. Compensations and Method of Payment	570.502, 570.513	24 CFR Part 200
5. Program Income	570.500(a), 570.503(b)(3), 570.504	
6. Record-Keeping Requirements	570.502, 570.503(b)(2), 570.506	24 CFR Part 200
7. Reporting Requirements	570.502, 570.507	24 CFR Part 200
8. Public Access to Program Records	570.502, 570.508	24 CFR Part 200
9. Grant Closeout Procedures	570.502, 570.509	
10. Uniform Administrative and Program Management Standards	570.502, 570.503(b)(4), 570.610	24 CFR Part 200
11. Reversion of Assets	570.502, 570.503, 570.505	
12. Real Property	570.502, 570.503(b)(7), 570.505	
13. Other Program Requirements	570.503(b)(5), 570.600–603, 570.605–614	
14. Termination	570.502, 570.503	24 CFR Part 200.43
15. Compliance with Laws/Regulations	570.501	24 CFR Part 200
16. Antidiscrimination/Affirmative Action and EEO	570.601, 570.602, 570.607	
17. Financial Management	570.502, 570.610	24 CFR Part 200.20; Treasury Cir. 1075
18. Audits	570.502, 570.610	24 CFR Part 200.
19. Religious and Political Activities	570.200(j), 570.207	
20. Budget Modifications	570.502, 570.503(b)(1)	
21. Monitoring	570.501(b), 570.502(b)(vii), 570.503(b)(1)	24 CFR Part 200
22. Conflict of Interest	570.611	24 CFR Part 200
23. Procurement Methods	570.502	24 CFR Part 200.
24. Budget	570.503	
25. Project Schedule/Milestones	570.503	
26. Environmental Review	570.503(b)(3)(1)	

* Unless otherwise noted, citations are from Title 24 of the Code of Federal Regulations (CFR).

SUBRECIPENT SPECIFIC REQUIREMENTS

Requirements	Federal Regulations	Other References
1. Federal Labor Standards – Davis-Bacon – Copeland Act (Anti-kickback) – Contract Work Hours and Safety Standards	24 CFR 570.603; 29 CFR Parts 1, 3, and 5	Section 110, Housing and Community Development Act of 1974 (HCDA); 40 U.S.C. 276a–276a-5; 40 U.S.C. 276c; 40 U.S.C. 327 *et seq.*
2. Equal Employment Opportunity	24 CFR 570.601–602, 24 CFR 570.607, 41 CFR 60	Executive Orders 11246 and 12086, 12 U.S.C. 1701u
3. List of Debarred or Ineligible Contractors	24 CFR 570.609, 24 CFR 24	
4. Non-Discrimination	24 CFR Part 8, 24 CFR 570.601, 24 CFR 570.602	Section 504 of Rehab. Act of 1973, Americans with Disabilities Act of 1990, Exec. Order 11063
5. Fire Safety Codes		Local
6. Building, Housing, and Zoning Codes; Housing Quality Standards	24 CFR 570.208(b)(1)(iv) and (b)(2)	Local
7. Lead-Based Paint	24 CFR 570.608, 24 CFR 35	42 U.S.C. 4821 *et seq.*
8. Lump Sum Drawdowns	24 CFR 570.513	
9. Environmental/Historic Preservation/National Environmental Policy Act/Flood Insurance Requirements – Siting Near Airports and Coastal Barrier Resources – Fish and Wildlife Protection – Flood Plain – National Historic Preservation – Noise Abatement & Control – Wetlands – Air Quality – Coastal Zones – Endangered Species – Thermal/Explosive Hazards – Flood Insurance	24 CFR 570.503(b)(5)(i), 24 CFR 570.604, 570.202, 24 CFR 58 Ref. At 24 CFR 58.6 See reference at 24.CFR 58.5, 58.6, 570.605	Sec. 104(g), HCDA 42 U.S.C. 4001 *et seq.*
10. Relocation, Real Property Acquisition, and One-For-One Housing Replacement – Uniform Relocation Act – Residential anti-displacement and relocation assistance – One-for-One Replacement	24 CFR 570.201(i), 570.606, 49 CFR 24, 24 CFR 570.606(c)(1)	Sect. 104(d) and 105(a)(11) of HCDA, www.hud.gov/relocation
11. Definition of Computation of Units of Services	24 CFR 570.503(b)(1)	IDIS instructions
12. Section 108 Loan Guarantees	24 CFR 570.700–570.709	Sec. 108 of HCDA
13. Applicable Credits		24 CFR Part 200

NOTE: These items supplement the basics of the table on the previous page.

APPENDIX 2

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

I. GENERAL INSURANCE REQUIREMENTS

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

REQUIRED COVERAGES

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

8.	Property & Casualty Coverage "All Causes of Loss" Builders Risk Form	100% of Contract Price, including change orders

OPTIONAL COVERAGES

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

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

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

B. **POLICY REQUIREMENTS**

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

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

3. **Insured Parties:** Each policy, except those for Workers' Compensation and Professional Liability, must name the City (and its officers, agents and employees) as additional insured parties on the original policy and all renewals or replacements during the term of this Agreement. The City's status as an additional insured under the Owner's insurance does not extend to instances of sole negligence of the City unmixed with any fault of the Owner or general contractor.

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

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

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

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

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

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

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

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

II. ADDITIONAL INSURANCE REQUIREMENTS:

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

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

Definitions:

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

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

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

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

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

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

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

(i) a certificate of coverage, prior to that person beginning Work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

(ii) no later than seven (7) days after receipt by the Owner, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

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

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

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

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

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

(ii) provide to the Owner, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

(iii) provide to the Owner, prior to the end of the coverage period, a new certificate of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(iv) obtain from each other person with whom it contracts and provide to the Owner: (1) a certificate of coverage, prior to the other person beginning Work on the project; and (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

(v) retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

(vi) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the Project; and

(vii) contractually require each person with whom it contracts, to perform as required under this Subparagraph 5.1 A-G, with the certificates of coverage to be provided to the persons for whom they are providing services.

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

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

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

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

APPENDIX 2 cont'd

RELEASE AND INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACT

I. RELEASE

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

II. INDEMNIFICATION

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

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

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

APPENDIX 3

CONSTRUCTION CONTRACT REQUIREMENTS

1. ***Davis-Bacon***. Compliance with the federal labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §§ 276a, et seq.); compliance with the Davis-Bacon Act shall be verified through on-site inspections by representatives of the City or at the City's option, the Approved Inspectors. Each Construction Contract should include as an attachment HUD 4010 Federal Labor Provisions and HUD Handbook 1344 –Davis Bacon Act. In addition, each Construction Contract must require compliance with CDBG Regulations at 24 C.F.R. 570.603 and Department of Labor regulations at 29 C.F.R. Parts 1, 3, 5, 6 and 7.

2. ***Release and Indemnity Provisions In Contracts***. Inclusion of a release and indemnity in favor of the City in substantially the same text as set forth in these Appendices (when the terms "Owner"/"Agreement" are used below, they encompass the terms "Contractor"/ "Contract" and "Subcontractor"/"Subcontract" "Supplier/Supply Contract" where applicable).

3. ***Insurance***. Inclusion of the requirement that the contractor, subcontractor, or supplier maintain insurance described in these Appendices (although the Appendices contain these insurance requirements as of the Effective Date of this Agreement, the version of insurance requirements in effect for the City's General Conditions of Construction Contract at the date of Closing of the City's Loan shall supersede the requirements set forth in the Appendices).

4. ***MWSBE Requirements***. Owner shall require written contracts and supply agreements with all MWSBE contractors and suppliers and such contracts and supply agreements shall comply with Section One, Paragraph K of this Agreement.

5. ***Disputes***. Subject to the requirements of Section 4 above, all disputes concerning the quantity, quality and completion or sufficiency of work performed or materials supplied pursuant to the Approved Construction Contract shall be submitted to the Director for resolution,

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

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

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

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

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

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

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

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

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

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

9. ***Cost-Plus Contracts Prohibited.*** Neither Borrower nor Owner nor Owner's contractors or any subcontractors will enter into contract types prohibited by the U.S. Department of Housing and Urban Development and the regulations at 2 CFR Part 200. Specifically, as required by the GLO, no party will enter into a cost-plus or cost-plus percentage of cost contract in connection with work at the Development.

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

APPENDIX 4

SURVEY REQUIREMENTS

(1) Prepared by a licensed Texas surveyor;

(2) in form and content satisfactory to the Director;

(3) in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by ALTA, American Congress on Surveying & Mapping and National Society of Professional Surveyors, or the Texas Surveyors' Association;

(4) in form necessary for the title company issuing title insurance to amend the survey exception to read "shortages in area";

(5) containing a certificate which includes a statement as to whether any portion of the land is located within a flood plain, flood hazard or flood prone area;

(6) certified to the title company and the City and their respective successors and assigns;

(7) including, a metes and bounds description of the real property comprising the land,

(8) with the surveyor's seal affixed; and

(9) with a certification for the Survey in the form set forth below or such other form acceptable to the Director:

The undersigned hereby certifies to the City of Houston, _____ (Owner), and _____ (Title Company) that this survey: (i) was made on the ground as per the field notes shown thereon and correctly shows the boundary lines and dimensions and the area of the land indicated thereon and each individual parcel thereof indicated thereon; (ii) correctly shows the location of all buildings, structures, and other improvements and visible items on the subject

property; (iii) correctly shows the location and dimension of all alleys, streets, roads, rights-of-way, easements, and other matters of record of which the undersigned has been advised by the title commitment issued by Title Company, Commitment No. _____ affecting the subject property according to the legal description in such recorded easements and other recorded matters; (iv) correctly shows the location of all streets and roads providing access to the subject property, and that such streets and roads that provide such access have been dedicated for public use in Book _____, Page _____, Plat Records of _____ County, _____, and are built and are being maintained by _____; there are no encroachments or overhangs on adjoining premises, streets, or alleys by any of said buildings, structures, or other improvements, rights of way, party walls, or boundary conflicts and there are no visible encroachments or overhangs on the subject property by buildings, structures, or other improvements situated on adjoining premises; the distance to the nearest intersecting street or road is as shown hereon; there is physical ingress and egress to the subject property by paved, dedicated public streets maintained by the city or county in which the subject property is located; and there is no visible use of ingress-egress across the subject tract by an adjoining property; and (v) was performed in accordance with the standards of a Category 1A survey under the Manual of Practice for Land Surveying in Texas.

*SURVEYED BY:*_____

SEAL

_____

Date of Survey

Reg. Professional Land Surveyor No. _____

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

For projects that are not located in a 100-year or 500-year flood zone:

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

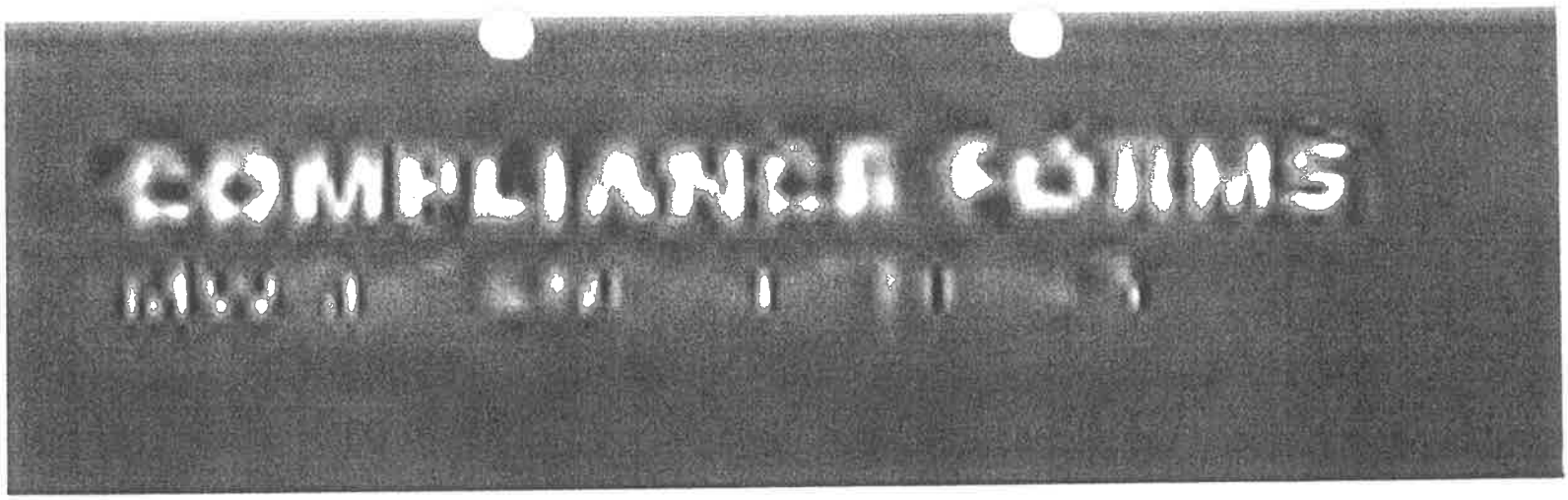
The above statement is for information only and this surveyor assumes no liability for the correctness of the cited map(s). In addition, the above statement does not represent this surveyor's opinion of the probability of flooding.

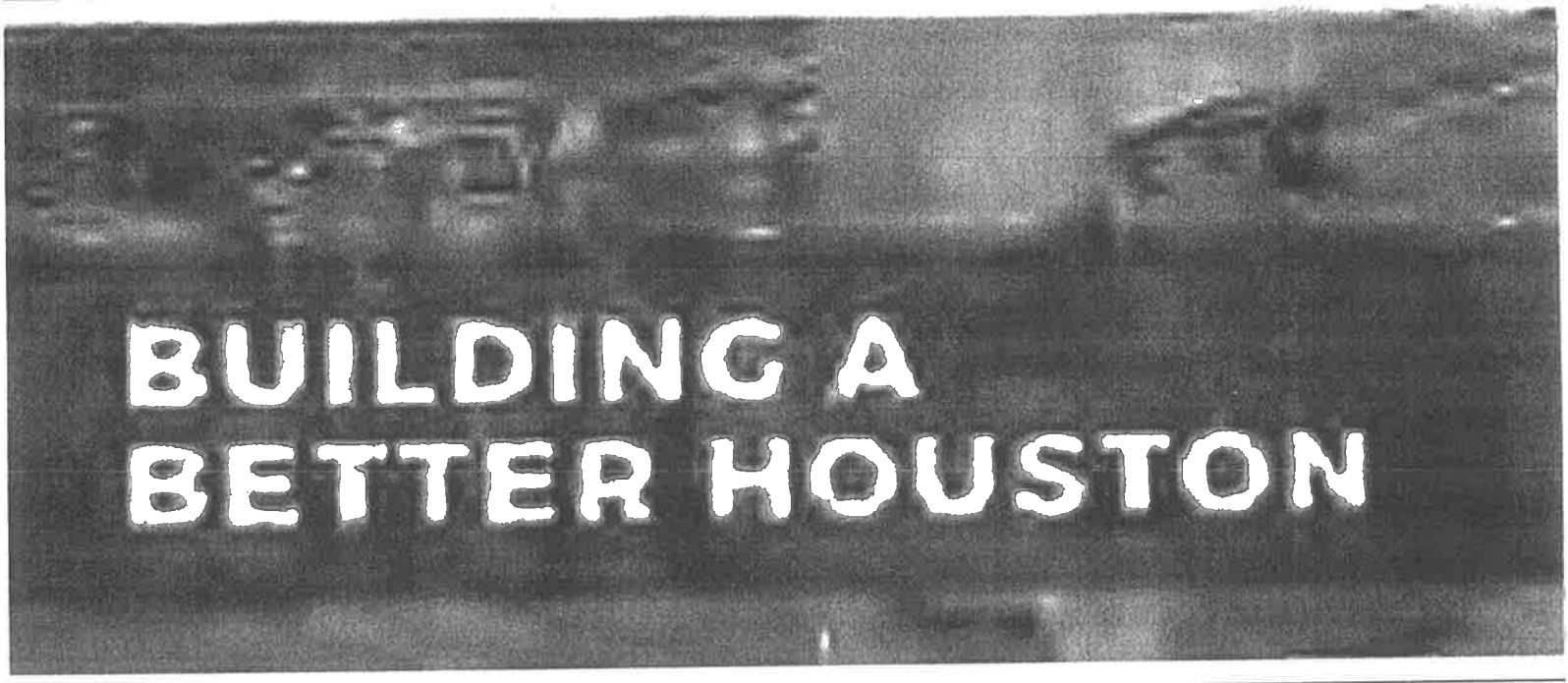
For projects that are located within a flood zone:

FLOOD PLAIN NOTE: This tract is within flood zone _____, as identified by the Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map for _____ County, _____, and incorporated Areas Map No. _____ dated _____. The above statement is for information only and this surveyor assumes no liability for the correctness of the cited map(s). In addition, the above statement does not represent this surveyor's opinion of the probability of flooding.

Appendix 5:

Compliance Forms





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

www.houstontx.gov/housing

@HoustonHCDD

CITY OF HOUSTON
HOUSING AND
COMMUNITY
DEVELOPMENT

CONTACT INFORMATION

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

COMPLIANCE FORMS

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

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



Compliance Cover Sheet

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

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

Instructions:

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

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

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

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

***REQUIRED BY ALL SECTIONS**

Request for Prime Contractor/Subcontractor Clearance

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

Date	
Project Name	
Project Address	
Prime Contractor/Sub/Supplier	
EIN or SS Number	
Address/Zip Code	
Phone Number	
Check the applicable entity	☐Sole Proprietorship ☐Corporation ☐Partnership ☐Other

List Principal(s) below:

Instructions:

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

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

***REQUIRED BY ALL SECTIONS**

Prime Contractor Information

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

Prime Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

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

***REQUIRED BY ALL SECTIONS**

Termination of Work Notice

Prime Contractor Information

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

Prime Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

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

***REQUIRED BY ALL SECTIONS**

[redacted]

Section 3 Utilization Plan

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

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

1A. MM/DD/YYYY	1B. Project Name	1C. Contract Number	1D. Contractor Amount	1E. Owner/Developer	1F. Prime/Subcontractor Name	1G. Covenance Contact Name	1H. Compliance Contact Telephone Number

2A. Required 10% Hard Cost Goal	2B. Achieved 10% Hard Cost Goal	2C. 10% Hard Cost Goal Met	2D. Soft Cost Budget (N/A if not applicable)	2E. Required 3% Soft Cost Goal	2F. Achieved 3% Soft Cost Goal	2G. 3% Soft Cost Goal Met

Section 3 Business Concern (SBC) Code (if eligible)	Subcontractor	Section 3 Certified (Select drop down Yes or No)	Gender (Select drop down Male or Female)	*Ethnicity (Refer options below)	Description of Service	EIN or SSN	Contract Amount	% of Contract	Hard Cost, Soft Cost or Supplier (select the correct choice)	Address & Phone Number
		No	Female	White American						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						
		No	Female	Hasidic Jewish						

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

MWSBE Utilization Plan

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

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

A. DD/MM/YYYY	B. Project Name	C. Contract Number	D. Contractor Amount	E. Prime Sub Contractor Name	F. Compliance Contact Name	G. Compliance Contact Telephone Number

NAICS Code (multiple)	Subcontractor/Supplier	MWSBE (select from drop down box)	Section 3 Certified (select from drop down box)	*Ethnicity (Refer options below)	Description of Service	EIN or SS#	Contract Amount	% of Contract	Hard Cost, Soft Cost or Supplier (select the correct choice)	Address & Phone Number & Email
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						
		No	No	Hasidic Jewish						

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

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

Contractor's Section 3 Compliance Certification

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

1. I am the_____of_____.
   (owner, partner, officer, representative, agent) (Company Name)

2. My company adheres to Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u which requires, to the greatest extent feasible, that a "good faith effort" given to identifying small businesses located within the boundaries of the Section 3 service area, making them aware of contracting opportunities, encouraging their participation and actually awarding contracts to Section 3 business concerns through the assistance of the City of Houston and their referral system.

3. An attempt will be made to undertake outreach activities intended to encourage participation by Section 3 residents in training and employment opportunities, to include but not be limited to utilizing the referral established by the City of Houston, the Texas Employment Commission, and Houston Works.

4. My company also acknowledges and affirms the required steps stipulated in the Code of Federal regulations 24 CFR Part §135.38 for any "New" services, i.e. employment/labor, services/materials, or subcontracting. Any violation of this requirement will present a negative impact on the performance rating of the recipient, developer, and contractor/subcontractor.

§ 135.38 Section 3 clause

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

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and new applicants can see. The notice shall describe the section 3 preference, set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the required qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the

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

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Affiant's Signature:_____ Address: _____

Affiant's Title:_____ Telephone: _____

Affiant's Company Name:_____

_____ Subscribed and

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

_____
Notary Public Signature

My Commission Expires: _____

Notary Stamp

First Source Hiring Agreement

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

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

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

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

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

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

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

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

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

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

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

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

The City of Houston
Department of Housing & Community Development

by_____
Section 3 Coordinator

Contractors Name:

by_____
its Owner/President/Vice President

*SECTION 3 ONLY

Permanent Employee List

Project Name:_____ Total Amount of Contract _____

Name of Contractor:_____ Address:_____

Name of Contact Person:_____ Date:_____

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

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

_____ _____ _____

Print Name / Title Signature Date

SECTION 3 ONLY

Section 3 Prime Contractor/Subcontractor Workforce Analysis Form

ESTIMATED PROJECT WORK FORCE BREAKDOWN

	Job Category	Estimated Number of Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled w/ Section 3* Residents
Non-Construction	Officer/Supervisor				
	Professionals				
	Technical				
	Office/Clerical				
	Service Workers				
	Other:				
Construction	Journeymen:				
	Apprentices:				
	Laborers				
	Trainees				
	Other:				

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

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

Company: _____ Title: _____

By: _____ Date: _____

[redacted]

Affidavit:

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

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

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

I,_____ am the_____ of_____.
(Print Name) (Owner, partner, officer, representative, agent) (Company Name)

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

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

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

_____
Company Name Representative Signature Title

STATE OF TEXAS §
§
COUNTY OF_____§

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

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

Notary Stamp

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

_____ My Commission Expires: _____
Notary Public Signature

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

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

Reporting Month:	Project Name
Subcontractor	Contracted With

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

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

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

Section 3 Procurement Process for Lower-Tier Subcontractors

1. Subcontractor will submit **Ebid Announcement** that lists scope of work, contact information and a bid due date (minimum is two weeks). Subcontractors should submit Ebid directly to General Contractor.
    a. Ebid will be forwarded to HCDD and will then be sent to all Section 3 Businesses.
2. Subcontractor will review all bids received and will award contract based on the Section 3 procurement guidelines, depending if bids are construction or non-construction:
    a. 10% of construction contract must be awarded to Section 3 Business.
    b. 3% of soft cost (non-construction) budget must be awarded to Section 3 Business.
3. Subcontractor will submit a **Bid Tabulation** after all bids have been received. The bid tabulation should indicate which awarded contracts were to a Section 3 Business.
4. Subcontractor will submit a **Utilization Plan** that lists all Lower-Tier Subcontractors, Professional Services and Suppliers being utilized. The template is provided on page #6 of the Section 3 Contractor Orientation Guide.

Section 3 Procurement Process for New Hires

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

Print Name	Title/Company	Signature	Date

*SECTION 3 ONLY

Section 3 Monthly Activity Report (PART I)

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

Employment and Training

A	B				C		D			
	New Hires ☐ No New Hires				Employees		Trainees ☐ No Trainees			
Job Category	Section 3 New Hires[3]		Non-Section 3 New Hires		Section 3 Employees[4]	Non-Section 3 Employees	Section 3 Trainees[4] Previously Reported That Worked This Month		New Section 3 Trainees Reporting for the First Time	
	# of New Hires	Hours Worked	# of New Hires	Hours Worked	Hours Worked	Hours Worked	# of Trainees	Hours Worked	# of Trainees	Hours Worked
Professional										
Technician										
Office/Clerical										
Trade:										
Trade:										
Trade:										
Trade:										
Other:										
Other:										
TOTAL										

NOTES:

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



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

Form Instructions

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

A. First name of Section 3 Resident

B. Last name of Section 3 Resident

C. Racial/ethnic code: 1 – White American, 2 – Black American, 3 – Native American, 4 – Hispanic American, 5 – Asian Pacific American, 6 – Hasidic Jew

D. Hire date of Section 3 Resident

E. Hourly rate of Section 3 Resident

F. Indicate Section 3 status by entering either: New Hire, Employee or Trainee

G. Trade work performed by Section Resident

H. Hours worked during reporting month by Section 3 New Hire or Section 3 Employee

I. Hours trained during reporting month by Section 3 Trainee

J. Indicate payroll classification: Full Time, Part Time, FT - Temporary, PT- Temporary, FT-Seasonal, PT-Seasonal, Internship

Project Name: _____

Subcontractor Name: _____

Executed Contract With: _____

Original Contract Amount:

Start of Work Date: _____

Contract Amount at Start of Work: _____

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

A.

Contract Amount Has Remained Less Than $100,000

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

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

Print Name	Title/Company	Signature	Date

B.

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

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

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

Print Name	Title/Company	Signature	Date

Section 3 EBID Announcement

Date: **BID DUE BY:**

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

Project Name: _____

Address, City, State, Zip: _____

From: _____

Summary of Work: _____

_____

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

*(**description and minimum qualifications**)* _____

_____

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

Contact Information:

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

Bidder Information: _____

_____

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

Contract Name: _____

Company: _____

Phone number: _____

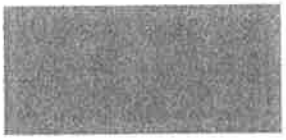
Address: _____

Email: _____

Trade/Specialty: _____

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

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



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

DATE: _____ APPLICATION DEADLINE: _____

TO : *Section 3 Residents*

PROJECT: _____

FROM: _____

POSITION NEEDED/DESCRIPTION: _____

CONTACT INFORMATION: _____

_____

Section 3 Residents: Include this cover sheet with your application

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

Contact Name: _____

Address: _____

Phone: _____ Email: _____

Job: _____

Job Skills: _____

_____

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

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

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

Sample Bid Tabulation

Date:

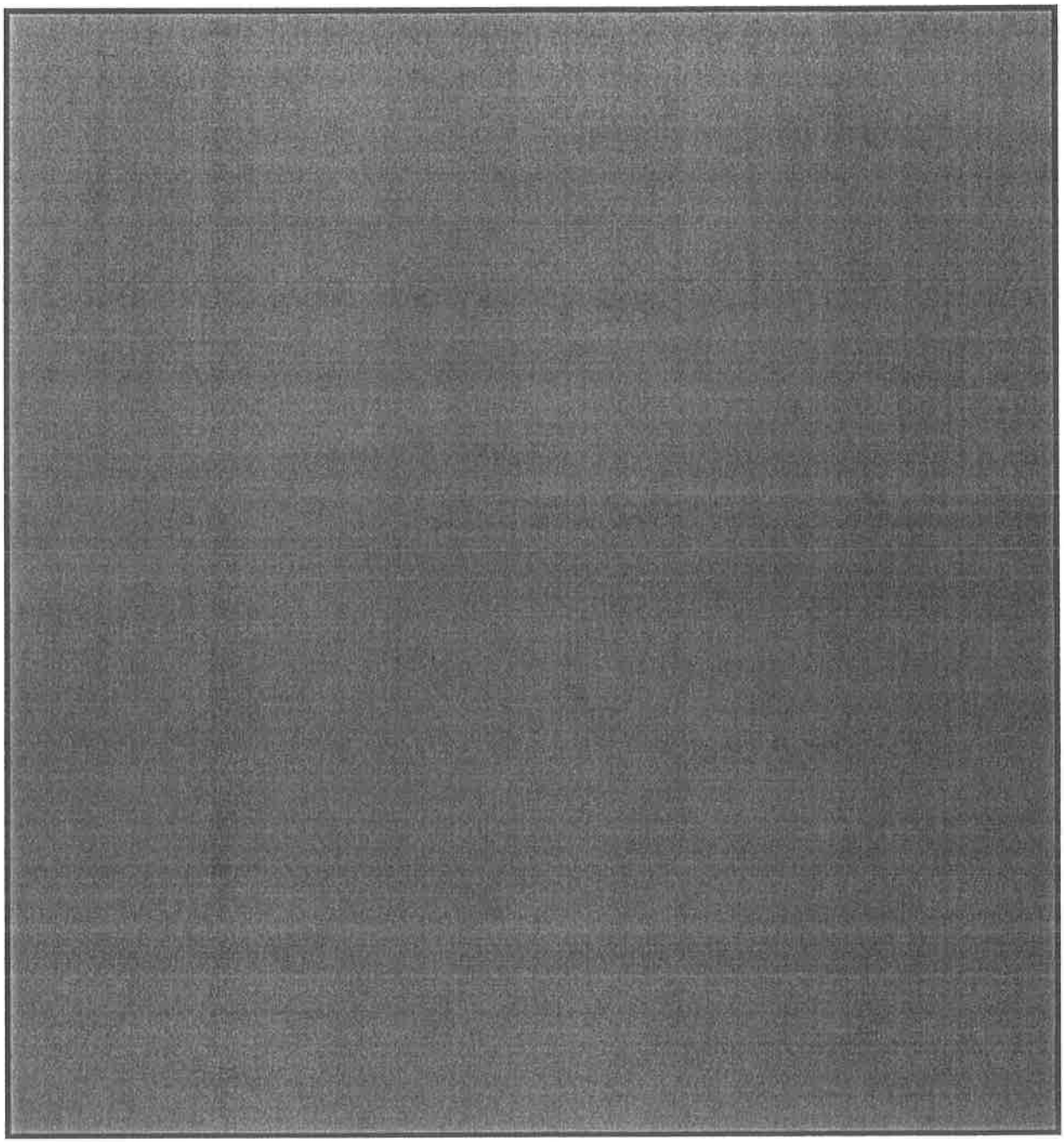
COST CODE:

Projected Budget

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

Labor	$ -	**PM:**	
Material	$ -		
TOTAL:	$ -	**SPM:**	
CONTRACT:		**VP:**	
P.O.:			

Signage Template





SUPPLEMENTAL COMPLIANCE FORMS, TEMPLATES AND REFERENCE MATERIAL

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

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



Work on Hold Notice

Prime Contractor Information

Project Name	
Project Address	
Prime/Sub Contractor Name	
Prime/Sub Contractor Address	
Exact or estimated date range that work is scheduled to be on hold	

Prime Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

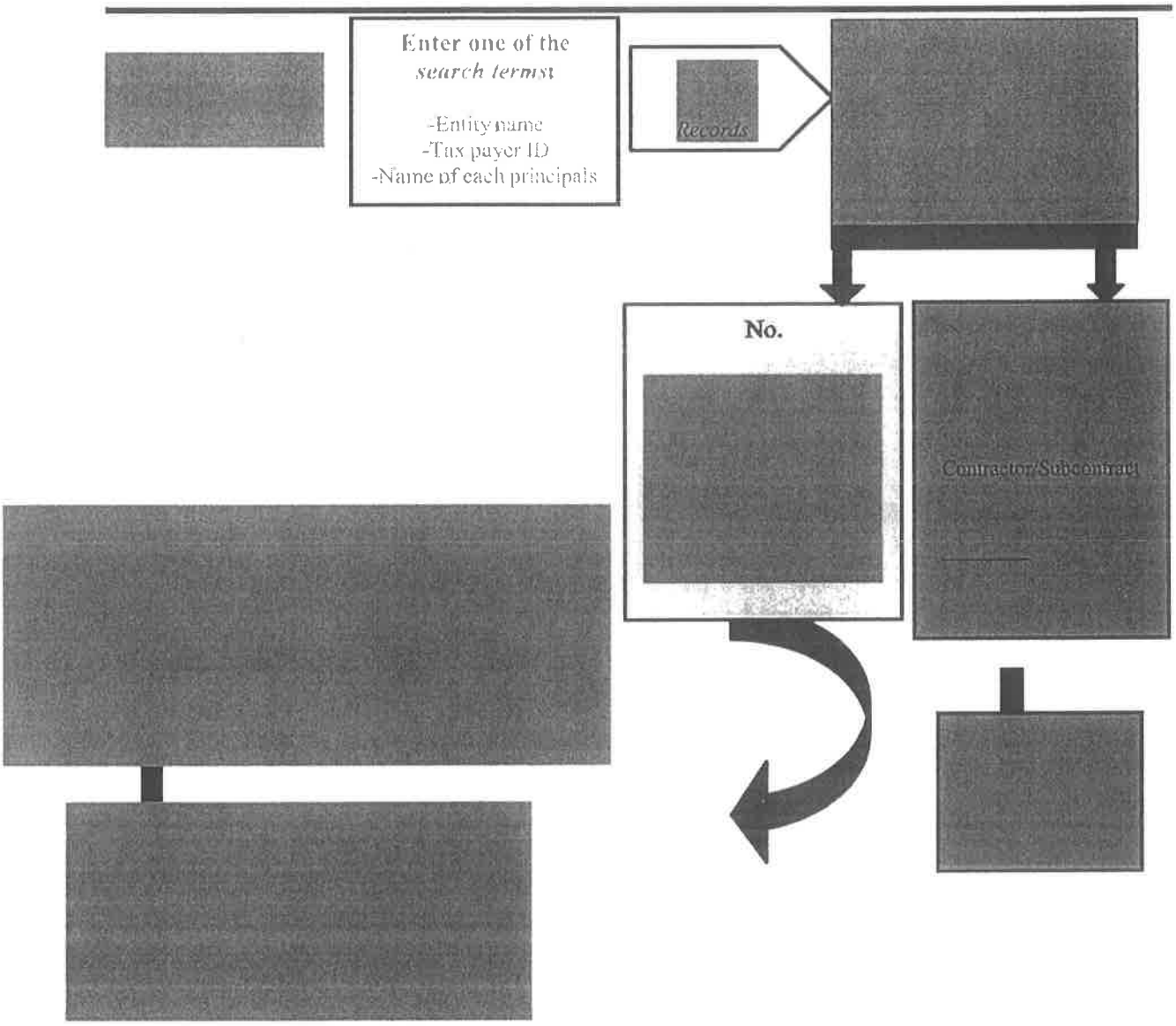
This form MUST be completed by the Prime Contractor and Subcontractor(s) who generate certified payroll reports and will not be working at the project site for more than 4 consecutive weeks. When work resumes, continue to number payrolls in sequential order from the last certified payroll report number. This form must be uploaded into LCP Tracker.

***REQUIRED BY ALL SECTIONS**

[redacted]

System for Award Management's

Instructions how to process a Request for Contractor Clearance





MWSBE Utilization Schedule

Status as of:	(enter date)
Project Name:	(enter project name)
Project Number	(enter project number)
Company Name	(enter construction Company name)

Month	Total	Sub 1 (Enter Name)	Sub 2 (Enter Name)	Sub 3 (Enter Name)
(enter NTP date)	$0	$0	$0	$0
(enter NTP date + 1 month)	$0	$0	$0	$0
(enter NTP date + 2 months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
(continue adding months)	$0	$0	$0	$0
	$ $0	$0	$0	$0
	% 0.00%	0.00%	0.00%	0.00%

Contract Amount: **$1,000,000**
Goal % **24.00%**
Goal $ **$240,000**

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

CITY OF HOUSTON CERTIFIED MWSBE SUBCONTRACTING AGREEMENT TERMS

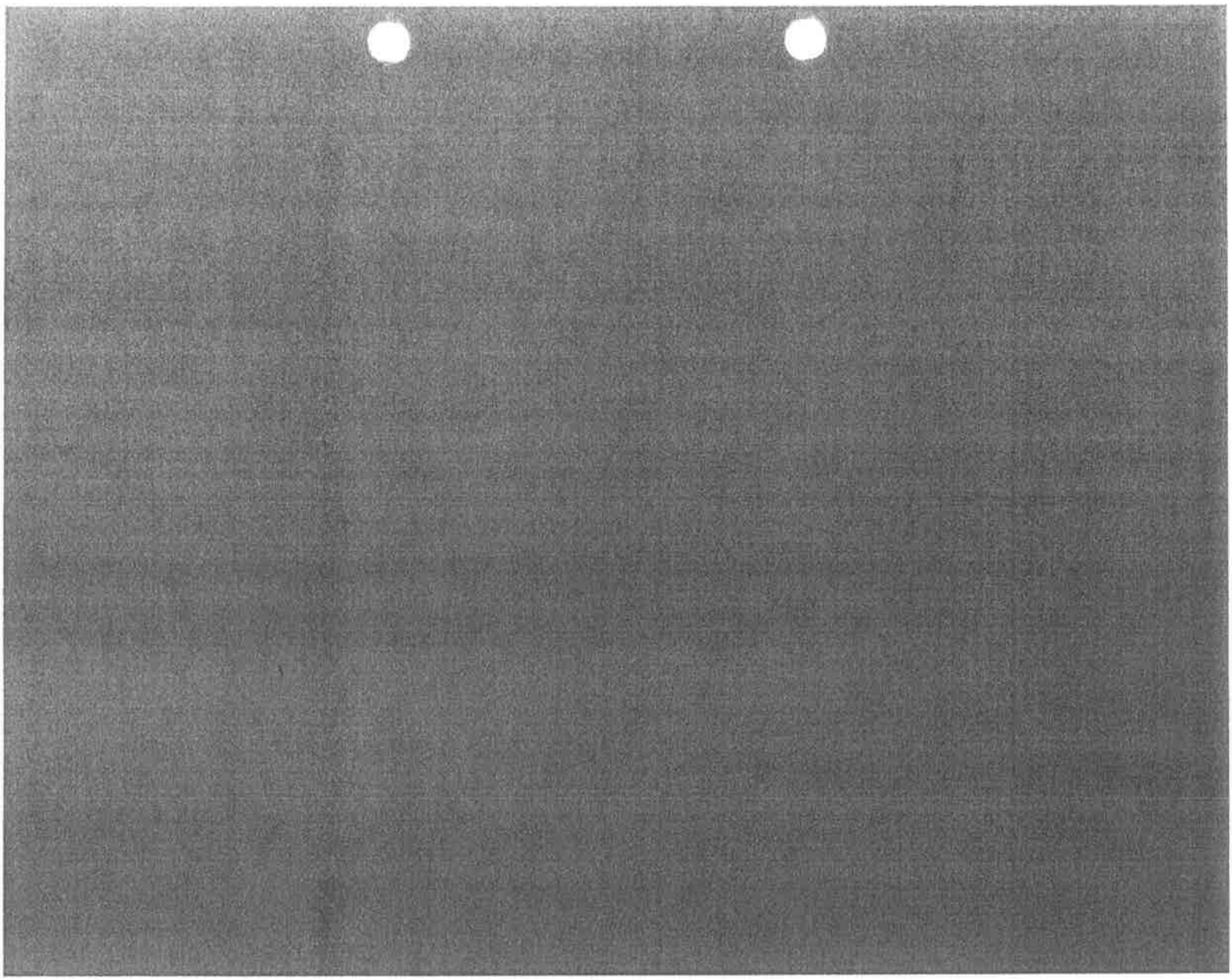
Contractor shall ensure that all subcontracting agreements with M/WSBE Subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO MEDIATION**" contain the following terms:

1. _____(M/WSBE Subcontractor/Supplier) shall not delegate or subcontract more than 50% of the work under this subcontracting agreement to any other Subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity.

2. _____(M/WSBE Subcontractor/Supplier) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the Subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontracting agreement. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action or the applicable statute of limitations.

3. Within five (5) business days of execution of this subcontracting agreement, Contractor (prime contractor) and Subcontractor shall designate in writing to the Office of Business Opportunity an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

These provisions apply to goal-oriented and regulated contracts as defined in City Code of Ordinances, Chapter 15, Article 5.



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

www.houstontx.gov/housing









CONTACT INFORMATION

City of Houston - HCDD 2100 Travis Street, 9th Floor Houston, TX 77002		
LABOR STANDARDS DAVIS-BACON COMPLIANCE SECTION		
Division Manager	Pirooz Farhoomand	(832) 394-6157; pirooz.farhoomand@houstontx.gov
Contract Compliance Supervisor	Maribel Rodriguez	(832) 394-6265; maribel.rodriguez@houstontx.gov
Sr. Contract Compliance Officer	Tiffany Boyce	(832) 394-6347; tiffany.boyce@houstontx.gov
Sr. Contract Compliance Officer	Luther Alaniz	(832) 394-5208; luther.alaniz@houstontx.gov

COMPLIANCE FORMS

Instructions: All compliance forms must be signed by a duly authorized member of the firm. The Prime Contractor and Subcontractors shall submit the following forms by the deadline provided below. Read each form to verify if it's applicable to your firm and follow the instructions written on each form.

The following form(s) are to be submitted ***before construction*** commences.

Form	Deadline
Compliance Cover Sheet	Prior to Start of Work date.
SAMs Verification/Request for Contractor/Subcontractor Clearance	Prior to Start of Work date.
Start of Work Notice	Upon commencement of construction work
Termination of Work Notice	Upon completion of work
Certificate of Appointing Officer	Prior to Start of Work date.

SUPPLEMENTAL COMPLIANCE FORMS, TEMPLATES AND REFERENCE MATERIAL

In addition to the forms listed on the previous page, contractor(s)/subcontractor(s) are **required**, where applicable, to submit supplemental compliance forms during and upon completion of the construction.
The supplemental forms, templates and reference material are available for download in LCPTracker. For your convenience, a **sample** of available forms and documents in LCPTracker are itemized below:

Form	Deadline
Work on Hold Notice	Refer to form for instructions
System for Award Management Instructions	N/A
Statement of Information for SAM Results	N/A
Payroll Deduction Authorization	Refer to form for instructions
Employee Verification of Multiple Job Classifications	Refer to form for instructions
Request for additional Classification & Rate	Refer to form for instructions
Template-Employee Rights Posters (English and Spanish Version)	N/A
Apprentice Information Sheet	N/A



Compliance Cover Sheet

Return with Compliance Documents **[Please complete all fields]**

Project Name	
Name of Contractor/Subcontractor/Supplier	I/We have a written contract or purchase order with:
Services to be provided:	NAICS code [Hint: To look up a code, please visit **http://www.census.gov/eos/www/naics/**]:
Company Address:	Pre-existing LCP Tracker User ID:
Tax ID Number	Contract Amount
Contact Person/Title	Email:
Phone Number	Fax Number:
*Owner's Ethnicity/Racial Background:	Gender:
☐ MBE ☐ WBE ☐ SBE ☐ Section 3	

Instructions:
This form must be completed by all contractors and suppliers upon execution of a contract agreement and/or purchase order.

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

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

Request for Contractor/Subcontractor Clearance

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

Date _____

Project Name _____

Project Address _____

Contractor/Subcontractor _____

Federal ID Number _____

Address/Zip Code _____

Phone Number _____

Check the applicable entity

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☐ Other:

List Principals below: _____

_____

_____

_____

Approved by HCDD: Date:_____ Print: _____

Instructions:
The Prime Contractor must submit this form with bid proposals for approval by HCDD.

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

The Prime Contractor verify all subcontractors. Search results and the Request for Clearance form must be uploaded in LCPTracker for each contractor.

Start of Work Notice

Contractor Information

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

Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

This form must be completed by the Prime Contractor/Subcontractor(s) as notice of commencement.

[redacted]

Termination of Work Notice

Contractor Information

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

Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:

This form must be completed by the Prime Contractor/Subcontractor(s) as notice that work has been completed.



Certificate of Appointing Officer

or Employee to Supervise Payment of Employees

Project Name: _____

Subcontractor Name: _____

(I/We) hereby certify that **(I am/we are)** **(the prime contractor/a subcontractor)** who will perform _____*(insert scope of work)* in connection with construction of the above-mentioned Project, and that **(I/(we)** have appointed

_____and whose signature appears as_____and/or
(Identifying Signature of Appointee)

_____and whose signature appears as _____
(Identifying Signature of Appointee)

to supervise the payment of (my/our) employees beginning_____(*insert month and year*); that he/she is/are in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the so-called Kick-Back Statue which he/she is to execute with **(my/our)** full authority and approval until a new certificate appointing another person for the purposes herein above stated.

ATTEST
Print Name _____
Signature: _____
Title: _____

Instructions:

The Certificate of Appointee Officer (CAO) must be executed by an authorized officer of a corporation, by a member of a partnership, or the sole owner. Only a member of the entity can be assigned as an appointee. Submit a new CAO when a new appointee is added.

Complete the CAO before construction starts. Upload the executed CAO(s) in LCPTracker.



Work on Hold Notice

Contractor Information

Project Name	
Project Address	
Sub/Contractor Name	
Sub/Contractor Address	
Exact or estimated date range that work is scheduled to be on hold	

Contractor Authorization

Name of Authorized Officer	
Signature	
Title	

Instructions:
This form must be completed by the Prime Contractor and Subcontractor(s) who generate certified payroll reports and will not be working at the project site for more than 4 consecutive weeks. When work resumes, continue to number payrolls in sequential order from the last certified payroll report number. The form must be uploaded into LCPTracker.

[redacted]

System for Award Management's

Instructions how to process a Request for Contractor Clearance

Go to www.sam.gov

Enter one of the *search terms*:

-Entity name
-Tax payer ID
-Name of each principals

Click on *Search Records*

Did you receive

No record found for current search?

No.

- Exclusions: Yes
-If results are found, click on "+" sign to expand. Print the page and attach it to the Request for Clearance.

Example below

Yes.

Print results page and attach it to the Request for Contractor/Subcontract or Clearance.

REPEAT FOR EACH SEARCH TERM.

Stop.

You are finished.

[redacted]

[redacted]



Statement Of Information for SAM.gov Results

This requested information is necessary because of a possible similarity between your name or the name of your firm and that of some other person. The form is used by the Compliance Division to verify a contractor/subcontractor eligibility requirement, when a possible common name appears on the results during search on the SAM.gov database.

INDIVIDUAL INFORMATION *(Please Print)*		
First Name	Full Middle Name	Last Name
Date of Birth (Month and Year Only) *HCDD reserves the right to request the complete DOB and ESN, **ONLY** upon request and if other information collected below is not sufficient.*		
RESIDENCES DURING THE PAST 10 YEARS (if more space is needed, add an additional page) *(City, State minimum required)*		
Street Address	City, State	From (Year) to (Year)
Street Address	City, State	From (Year) to (Year)
ADDRESSES OCCUPATIONS DURING THE PAST 10 YEARS (if more space is needed, add an additional page) *(City, State minimum required)*		
Street Address	City, State	From (Year) to (Year)
Street Address	City, State	From (Year) to (Year)

ENTITY INFORMATION *(Please Print)*
State where entity was originally established/registered
Year entity was established/registered
THE PAST 10 YEARS WHERE ENTITY PERFORMED WORK (if more space is needed, add an additional page)
City, State
City, State
City, State
SIGNATURE REQUIRED
Print Name Signature Date
FOR HCDD ONLY
Individual Information — Does Not Match Results ☐ Match ☐
Entity Information — Does Not Match Results ☐ Match ☐
Print Name Signature Date



Payroll Deduction Authorization

Project Name: _____

Employee Name: _____

Contractor/Subcontractor Name: _____
Effective Date of Deduction(s)
(i.e. pay period) _____

I authorize my employer to deduct from my paycheck a total amount of $_____ **or** a fixed percentage of _____ % from my total gross earned the entire week.

Payment of	Deduction Amount	One Time Only	Weekly	Bi-Weekly	Monthly	Other
Loans						
Retirement (401K)						
Uniforms						
Insurance Premiums						
Union Dues						
Child Support *(provide court order)*						
Other: *(insert type of deduction)*						

Employee's Signature: _____

Instructions: This form must be completed contractors/subcontractors when a deduction, other than taxes, is deducted from an employee's gross earning. You can enter a fixed percentage or amount to submit the form once. Submit a revised form when there's a change to a deduction or for new deductions. All deductions are subject to verification upon request.

Upload the completed form in LCPTracker.

Employee Verification of Multiple Job Classifications

Date: _____

Project Name: _____

Employee Name: _____

Contractor/Subcontractor Name: _____

The undersigned hereby certifies that he/she has engaged in the following work classifications, found in the chart below, during:

payroll #_____ week beginning:_____/_____/_____ and ending:_____/_____/_____
(Date) (Date)

1. WORK CLASSIFICATION	Instructions: Insert days/dates for the given workweek in row below and hours worked in lower rows 2. 7-day work week							3. TOTAL HOURS	4. RATE OF PAY	5. GROSS PAY
TOTALS										

Employee's Signature:_____

Instructions: This form is **not** a time sheet. This form must be submitted by contractors/subcontractors that report an employee on a certified payroll report under two (2) or more job classifications (aka dual classification). Submit a form for each certified payroll report where dual classification is used.

Upload the form in LCPTracker.



Request of Additional Classification & Rate

Date: _____

Project Name: _____

Contractor/Subcontractor Name: _____

Start of Work date: _____

Proposed Trade Job Classification: _____

Proposed Hourly Rate (Specific amount): _____

The undersign hereby certifies that he/she proposes the above classification and hourly rate needed for work not included within the scope of classifications listed in U.S. Department of Labor wage determination.

_____
(Signature)

_____
(Print Name)

_____
(Title)

Attached the following [Notice: The request will not be processed until all supporting documents are received.]:

☐ Explanation of the job function and how it relates to the scope of work

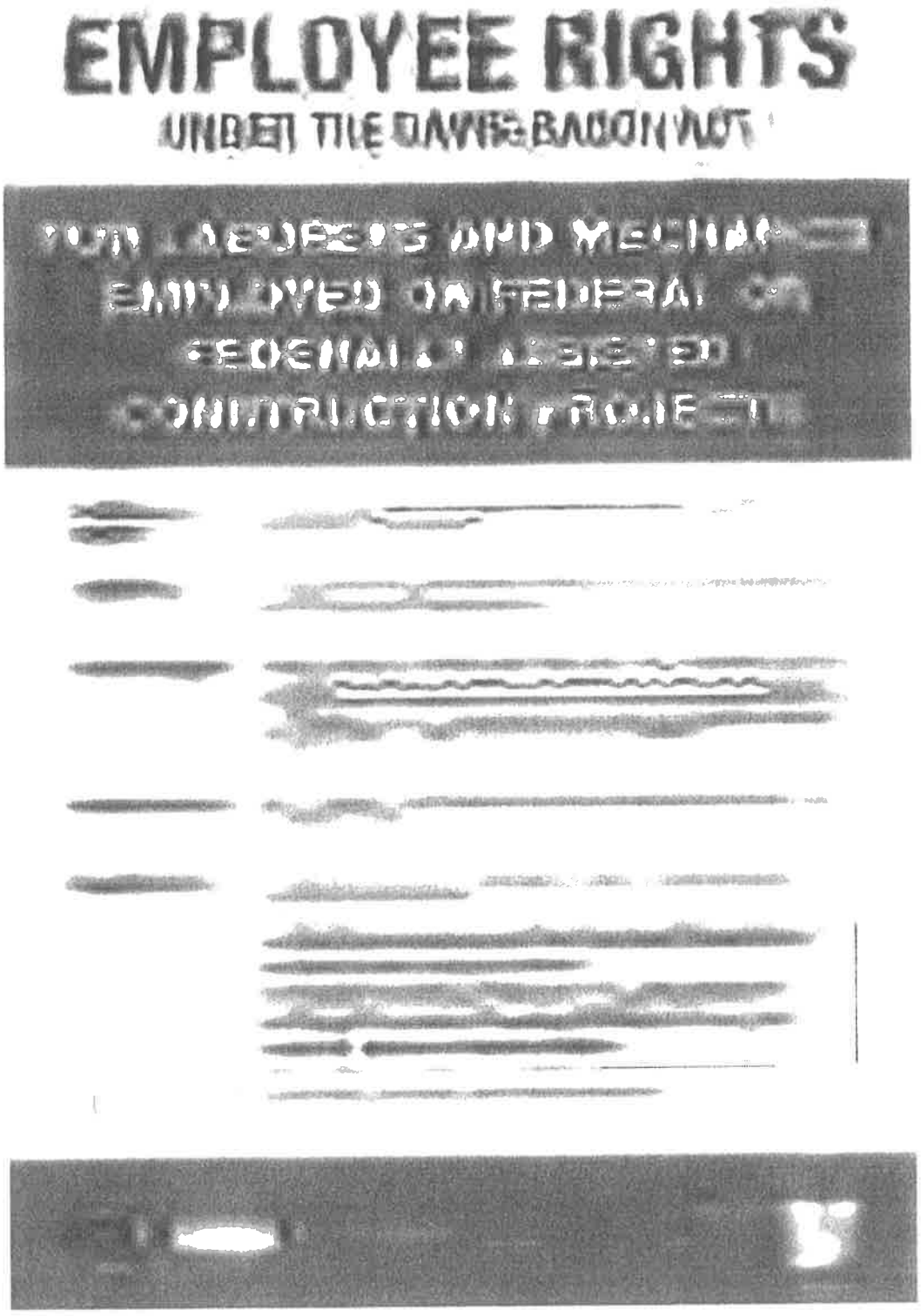
☐ Picture of equipment and/or tools of the trade

Instructions: Submit this form with all supporting documents when a classification is needed that is not on the issued General Wage Determination(s). You may, also, submit when you're seeking DOL to confirm the use of a job classification for a specific scope of work.

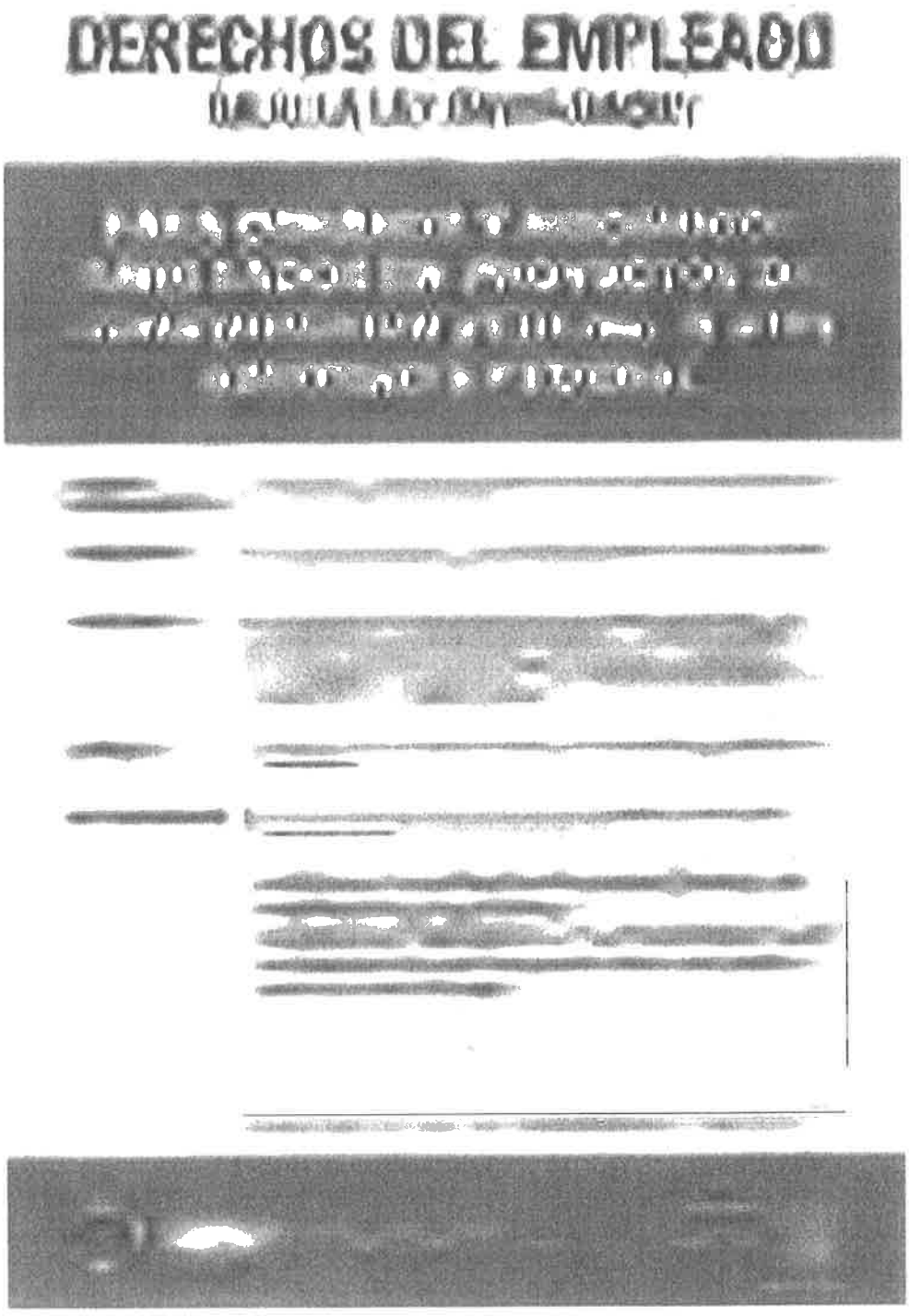
Please allow up to 30-45 days for the request to be processed by the U.S. Department of Labor (DOL). The certified payroll reports are subject to *DOL's approval, conditional approval or denial.* In the meantime, submit certified payroll reports under a laborer classification with the proposed rate(s). All certified payroll reports are subject revision pending DOL decision.

Email the request to your assigned HCDD staff member for processing.

Employee Rights Posters (English Version)



Employee Rights Posters (Spanish Version)





Apprentice Information

Apprentice Trainee Wage Rate Information			
Name of Trainee:	_____	Current Level:	_____
Classification:	_____		
Ratio:	_____Journeyman to_____Apprentice		
%Wage Rate:	_____%	Base Rate:	$_____

Amount of Fringe Benefits Applied (i.e. medical, dental, 401K, etc. per hour)	
Fringe Benefit	**$$ / Rate Per Hour**
Medical	
Dental	
Vacation	
Sick	
Holiday	
Other: (Itemize)	

Supporting Documents			
Document Type	**Description**	**Due Date**	**Check if attached**
ENTIRE Standards of Apprenticeship Policy	By-laws; program guidelines; identifies ratios, scale, fringes; appendix	One time submission to setup apprentice(s)	☐
Apprenticeship Certification issued by DOL	DOL signed 90-day good standing certificate for each apprentice; identifies the date apprentice began program	Every 90 days from the date issued	☐
Timesheet	7-day work week	Only submit if apprentices already began working on the project.	☐

Instructions: Enter the apprenticeship data in the employee's (apprentice) setup tab to expedite approval process. Upload this form in LCPTracker.

APPENDIX 6

CERTIFICATION REGARDING LOBBYING

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

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

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

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

Owner or Contractor

_____
Date

By:_____
Name: _____
Title: _____

APPENDIX 7

CERTIFICATION REGARDING

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The undersigned certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

(b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

_____
Type Name & Title of Authorized Representative

_____
Signature of Authorized Representative

_____
Date

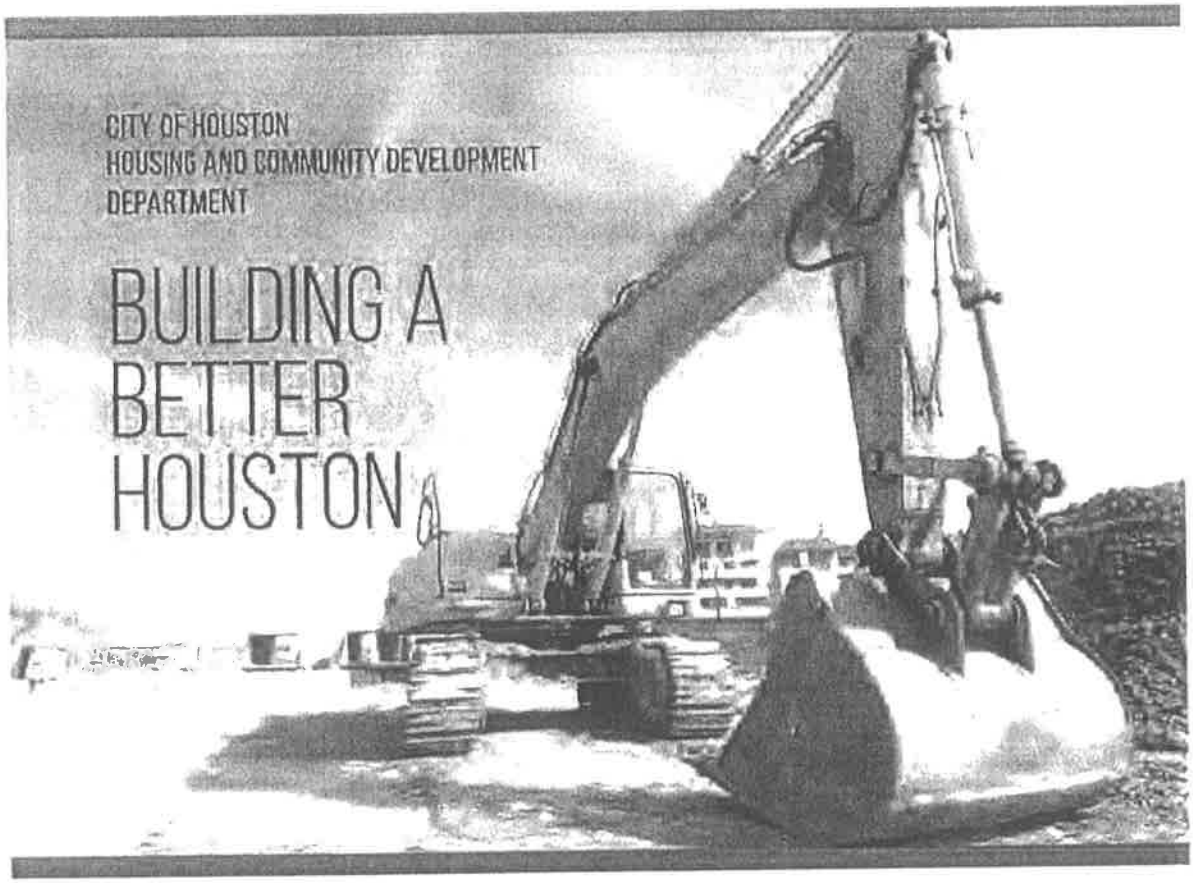
I am unable to certify to the above statements. My explanation is attached.

Appendix 8:

Reserved

Appendix 9:

City's MWSBE, Section 3 and Labor Standards Requirements



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

CITY OF HOUSTON
HOUSING AND
COMMUNITY
DEVELOPMENT

www.houstontx.gov/housing

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FEDERAL LABOR STANDARDS PROVISIONS (HUD-4010)

Federal Labor Standards Provisions

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

Applicability

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

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

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

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

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

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

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

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

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

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

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

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

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

3. **(i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

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

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

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

4. **Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of ... influencing in any way the action of such Administration ... makes, utters or publishes any statement knowing the same to be false ... ... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

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

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

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

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

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

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

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

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

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat. 96), 40 USC 3701 et seq.

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

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

Sec. 15-81. - Declaration of policy.

(a) It is the policy of the city to stimulate the growth of local minority, women and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting, as set forth in this article. The purposes and objectives of this article are:

(1) To promote equal opportunity for participation amongst local minority, women and small business enterprises in all phases of city contracting;

(2) To increase the utilization of such local firms in providing certain goods and services;

(3) To provide opportunities to broaden and enhance local firms' ranges of capacities; and

(4) To increase opportunities for such local firms to serve as contractors, in addition to acting as subcontractors to others, there applicable, in an effort to remedy discriminatory practices and eliminate statistical disparities in city contracting.

(b) This article is intended to be remedial in nature and to continue only until its purposes and objectives are achieved. At least every five years the city shall make its best efforts to initiate a review of its minority and women business enterprise program, the results of which shall be provided to city council, who shall determine, upon its receipt of recommendations and the consideration of other relevant information from the OBO director, whether there is strong statistical and anecdotal evidence of discrimination against minority and women business enterprises in city contracting warranting the continuation of a race and gender conscious minority and women business enterprise program.

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

Sec. 15-82. - Definitions.

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

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

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

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

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

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

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

a. For which competitive bids are required by law;

b. Which is not within the scope of the disadvantaged business enterprise programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and

c. That the initiating city department, in consultation with the OBO director, determines has significant subcontracting potential in fields in which there are adequate numbers of known MWSBEs to compete for and perform the subcontract service(s).

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

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

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

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

Minority business enterprise or *MBE* means a business which is:

a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or

b. A corporation in which at least 51 percent of the stock or of the assets of such corporation is owned, controlled and managed by one or more minority persons; or

c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more minority persons; or

d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or

e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women and such minority person; or

f. A business which has been certified as an MBE by the office of business opportunity under any other recognized MBE program.

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

a. Black American, which includes persons having origins in any of the black racial groups of Africa;

b. Hispanic American, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;.

c. Asian-Pacific American, which includes persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, the Federated States of Micronesia, or Hong Kong, or the region generally known as the Far East;

d. Native American, which includes persons having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut, Native Hawaiian; or

e. Subcontinent Asian American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

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

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

Regulated contract means any contract, agreement or other undertaking:

a. For which competitive bids are not required by law;

b. That is not covered by the MBE/WBE programs of the United States Environmental Protection Agency or the United States Department of Transportation or any other federal or state agency having jurisdiction; and

c. That the recommending city department has determined, in consultation with the director of the office of business opportunity either:

   1. Has significant subcontracting potential in fields in which there are sufficient known MWSBEs to perform the particular subcontract service(s); or

   2. Is of a type for which there are sufficient known MWSBEs which have represented their ability to perform the prime contract service to afford effective competition for the prime contract.

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

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

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

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

a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or

b. A corporation in which at least 51 percent of the stock or assets of such corporation is owned, controlled and managed by one or more women; or

c. A partnership in which at least 51 percent of the assets of such partnership is owned, controlled and managed by one or more women; or

d. Any other business or professional entity in which at least 51 percent of the assets in such business or professional entity is owned, controlled and managed by one or more women; or

e. Any entity in which at least 51 percent of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or

f. A business which has been certified as a WBE by the office of business opportunity under any other recognized WBE program.

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

Sec. 15-83. - Program elements.

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

(1) The supply of goods and nonpersonal or nonprofessional services; and

(2) The performance of personal or professional services;

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

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

(b) Based upon the measured utilization and availability and any other relevant factors prescribed in Part 26, Title 49 of the Code of Federal Regulations and identified in the report submitted pursuant to subsection (a) above, city council shall from time to time set annual city-wide percentage goals for city contracting with MWSBEs in each of the two named categories described in subsection (a)(1) and (2) above and for contracting with MWSBEs in the construction category. The adjustment, if any, in the percentage goals shall be made during the first quarter of the fiscal year.

(c) It is the responsibility of each city department to determine which contracts initiated by it are goal-oriented contracts and which are regulated contracts. If the determination is made that a contract is a goal-oriented contract or a regulated contract, the initiating department shall review the contract and shall determine, by reference to the MWSBE register, the number of certified MWSBEs in each of the two named categories described in subsection (a)(1) and (2), above, and for construction, the number of certified MWSBEs in the construction category. The initiating department director or his or her designee shall determine whether the contract is one to which MWSBE provisions should be applied.

(1) These provisions are not required to be applied in the following circumstances:

a. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy;

b. The service or goods requested are of such a specialized, technical or unique nature as to require the city department to be able to select its contractor without application of MWSBE provisions (such as contracts for expert witnesses, certain financial advisors or technical consultants);

c. If application of MWSBE provisions would impose an unwarranted economic burden or risk on the city or unduly delay acquisition of the goods or services, or would otherwise not be in the best interest of the city; or

d. If the possible MWSBE participation level based on MWSBE availability would produce negligible MWSBE participation.

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

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

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

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

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

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

(a) Applications for certification as a MWSBE and any addenda thereto shall be made on a form promulgated by the OBO director, and the requirements for certification shall be consistent with the applicable requirements set forth in subsection (b) below.

(b) The office of business opportunity has responsibility for:

(1) Establishing procedures for the implementation of this article, and reviewing and approving procedures established by city departments, such procedures to be narrowly designed to attain the purposes and objectives specified herein without unduly limiting nonminority-owned or nonwoman-owned or established business enterprises. Such procedures shall be reviewed and approved by the mayor and by the city attorney prior to implementation;

(2) Certifying businesses as minority, small or women business enterprises and maintaining and distributing to affected city departments a current register, updated monthly, of such business (including a separate listing of such businesses whose applications for certification are pending) specifying the categories of city contracting represented by the certified MWSBEs;

(3) Developing educational programs for and otherwise assisting (without offering favoritism in relation to the competitive bidding system) MWSBEs to compete effectively for city contracts;

(4) Making recommendations to the mayor, city council and city departments to further the policies and objectives of this article, including but not limited to assisting city departments in setting contract-specific MWSBE goals;

(5) Reviewing documentation from potential contractors and from contractors concerning good-faith efforts made to meet or exceed the participation level for contracts. The final recommendation to city council for award or for acceptance of work shall be the city department's, although the office of business opportunity may take exception;

(6) Compiling a report of the progress of city departments, by department, in attaining the city-wide goals set by city council. This report shall be based upon MWSBE contractor and subcontractor information, to be specified by the office of business opportunity. Upon completion, the report is to be submitted quarterly to city council members, the mayor and all affected city department directors for their information;

(7) Receiving and reviewing complaints and suggestions concerning the MWSBE program from contractors, MWSBEs and city departments; and

(8) Without limiting the authority of the office of business opportunity to establish procedures that are consistent with the terms of this article, the office of business opportunity is specifically directed to promulgate and implement procedures as follows:

a. Grievance procedures for any person aggrieved by any decision of the office of business opportunity under this article. The procedures shall include notice and a hearing before an impartial hearing officer who shall be appointed by the mayor;

b. Mediation procedures for the resolution of disputes between contractors or bidders and MWSBE participants or potential participants with respect to any aspect of compliance with this article, including, without limitation, any assertion that a contractor, subcontractor, or MWSBE has failed to make good faith efforts to comply with this article;

c. Procedures to implement and enforce any sanctions provided under this article;

d. Procedures to ensure performance of work by MWSBEs, which procedures shall include: (i) a requirement that no more than 50 percent of their work may be subcontracted, without a specific waiver from the office of business opportunity for cause; (ii) a requirement that the minority person, small business or woman owner of a MWSBE have the necessary experience, expertise, credentials and regulatory authority to conduct the type of business for which the business is certified; (iii) a requirement that bidders and contractors make good faith efforts to meet or exceed contract MWSBE goals; and (iv) a requirement that MWSBEs accurately represent all material information required for certification and truly perform a commercially useful function;

e. Procedures for counting participation by MWSBEs as prime contractors, subcontractors, suppliers and joint venturers on city contracts, which procedures shall ensure that all work performed by MWSBEs is included in the computation of the progress made toward meeting the annual city-wide goals;

f. Procedures to ensure that this article is limited in its application to the certification of locally based MWSBEs;

g. Procedures to coordinate the operation of this article with other local MWSBE programs, which may include reliance upon certification procedures of other entities that are determined to be reliable and equivalent to this article;

h. Procedures to ensure access to necessary records of prime contractors and subcontractors on city contracts; and

i. Procedures for handling theft of services (wage theft) complaints of employees of city contractors and subcontractors.

(c) MWSBE certification shall be valid for a period of three years from the date of certification; provided, however, all applicants certified as MWSBEs shall be subject to review on an annual basis pursuant to procedures established by the OBO director to ensure compliance with all applicable provisions of this article.

(d) Applications for renewal of MWSBE certification shall be evaluated under the same criteria and subject to the same manner of review as original applications.

(e) All procedures established under this section shall be reviewed and approved by the city attorney prior to implementation. A copy of all procedures hereunder shall be maintained in the office of business opportunity for inspection, and copies may be purchased at the fees prescribed by law.

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

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

(a) Each department director shall be accountable for the oversight and implementation of the following activities:

(1) Informing MWSBE organizations or associations of the department's procurement procedures and future procurement opportunities;

(2) Ensuring that department bid solicitations and requests for proposals are sent to MWSBEs in a timely manner;

(3) Referring MWSBEs to technical assistance services available from the office of business opportunity and other organizations that provide such services;

(4) Reviewing each request for waiver or modification of participation goals prior to its submission to the office of business opportunity for approval;

(5) Monitoring the department's procurement activities to ensure compliance with and progress towards the city-wide participation goals; and

(6) Providing the OBO director with the departmental utilization plan prescribed in subsection (b) of this section and any other documentation requested by the office of business opportunity necessary in evaluating a department's progress in achieving city-wide participation goals.

(b) Each department that has procured goods and services in excess of three million dollars during the fiscal year ending on June 30 th of the preceding calendar year shall be required to submit a departmental utilization plan for the following fiscal year commencing on July 1 st . Departmental utilizations plans shall be submitted on or before June 15, 2014, and not later than June 15 th of each calendar year thereafter.

(c) Each department director shall be responsible for creating, submitting, and implementing an annual departmental utilization plan that shall include, at a minimum, the following:

(1) The department's forecast of anticipated projects and contract specific goals for the upcoming fiscal year;

(2) A detailed, written explanation for any departmental goal that is not consistent with the overall city-wide goals for MWSBE participation;

(3) A list of the names and titles of department personnel responsible for the implementation of the departmental utilization plan;

(4) The methods and relevant activities proposed for achieving the department's participation goals; and

(5) Any other information the department director deems relevant or necessary.

(d) Upon review by the OBO director, all departmental utilization plans shall be submitted to the mayor and city council for final approval.

(e) A departmental utilization plan may be amended to reflect changes in the department's projected procurements, expenditures, or other relevant circumstances and resulting changes in the department's participation goals. Such amendments shall be submitted to the OBO director for review and shall be submitted to city council for final approval not less than 30 days prior to the proposed date of implementation.

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

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

Sec. 15-85. - Filing of plan.

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

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

Sec. 15-86. - Sanctions.

(a) The OBO director is authorized to suspend any contractor who has failed to make good faith efforts to meet any goal established under this article from engaging in any contract with the city for a period up to, but not to exceed, five years. The OBO director is also authorized to suspend any MWSBE who has failed to make good faith efforts to meet all requirements necessary for participation as a MWSBE from engaging in any contract affected by this article for a period up to, but not to exceed, five years.

(b) In accordance with section 15-84 of this Code, the office of business opportunity shall establish procedures for the imposition of sanctions and shall ensure that no sanction is imposed without notice of the grounds being given and an opportunity for a hearing consistent with the procedures set forth in sections 15-22, 15-23, and 15-24 of this Code. Any procedure established shall be consistent with state law.

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

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

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

(b) Following the review described in this section, each certified MWSBE or MWSBE applicant shall be re-evaluated under this section on an annual basis based upon the size standards and methods of calculation

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

(c) All MWSBEs and MWSBE applicants shall, upon written request of the OBO director, provide to the office of business opportunity copies of any and all documents, including without limitation financial statements and tax records, requested by the director in connection with the review authorized in subsection (a) of this section, not later than 20 business days following the date of mailing of the request. Failure to timely and completely comply with any such request will authorize the imposition of sanctions under section 15-86 of this Code, or denial of certification in the case of a MWSBE applicant.

(d) Following the review authorized by subsection (a) of this section, the office of business opportunity shall classify each MWSBE or MWSBE applicant whose size meets or exceeds the size standard identified by the SBA for that class of enterprise as an established business enterprise. The classification shall be effective as of the date of mailing of the notice provided in section 15-88 of this Code.

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

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

(a) Immediately upon classification of a certified MWSBE or MWSBE applicant as an established business enterprise pursuant to section 15-87 of this Code, the office of business opportunity shall notify the business so classified of the action by United States certified mail, return receipt requested, addressed to the last known address of the business and deemed given when placed in a United States mail depository.

(b) Each notice shall inform the affected MWSBE or MWSBE applicant of the following matters: (1) That the MWSBE or MWSBE applicant has been classified as an established business enterprise;

(2) That the classification is effective as of the date of mailing of the notice;

(3) That the MWSBE or MWSBE applicant may appeal the classification or seek a waiver of the classification pursuant to the procedures established under this section;

(4) That the provisions of section 15-89 of this chapter shall become enforceable with respect to any certified MWSBE one year following the notice of classification, unless the decision is reversed or a waiver is granted and the classification is withdrawn prior to the expiration of the one-year period; and

(5) That any MWSBE applicant deemed ineligible for certification based upon its classification as an established business enterprise shall remain ineligible for certification unless and until any withdrawal of the classification as an established business enterprise is granted pursuant to an appeal or a request for waiver conducted under this section.

(c) In order to appeal a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written notice of appeal no later than 60 days following the date of mailing of the notice of classification. The sole basis for an appeal shall be that the office of business opportunity has incorrectly calculated the size of the business according to SBA standards based upon incorrect information or error in computation. The notice of appeal shall be accompanied by any documentation necessary to demonstrate the asserted error. If the OBO director finds that an error or errors were made in calculating the size of the business and that any such error resulted in an incorrect classification as an established business enterprise, the classification shall be withdrawn and the business promptly notified of the withdrawal. If the OBO director finds that no error was made, or that any error would not materially alter the classification, he shall notify the business that the classification is not altered, by certified mail, return receipt requested. The business may within ten days of the date of mailing of the notice submit to the OBO director a written request for a hearing, which hearing shall be conducted under the procedures set forth in subsections (e) through (g) of this section.

(d) In order to seek a waiver of a classification as an established business enterprise, a MWSBE or MWSBE applicant must submit to the OBO director a written request for a hearing no later than 60 days following the date of mailing of the notice of classification. The written request shall include documentary evidence, including but not limited to financial statements and tax records, relevant to the following criteria:

(1) Profitability of the enterprise;

(2) Sales of the enterprise, including a demonstration that 55 percent or more of the enterprise's sales, within the period utilized by the office of business opportunity in its classification determination, are not related to city contracts;

(3) Ability of the MWSBE or MWSBE applicant to obtain bonding, if the enterprise acts as a prime contractor or in a category in which obtaining bonding is required; and

(4) Positive comparison of the enterprise's business and financial profile with those of non-MWSBE firms in the same business category based on an objective industry standard.

(e) The OBO director shall notify the affected MWSBE or MWSBE applicant of the place and time of a hearing before the OBO director or his designee to consider an appeal requested under subsection (c) of this section, or a request for waiver of the classification under subsection (d) of this section, or both, as applicable, by United States certified mail, return receipt requested. The hearing shall be set not later than 30 days following receipt of the request, provided that the OBO director or his designee may in his discretion extend such date by a reasonable period for good and sufficient cause shown. Hearings for businesses that have both appealed under subsection (c) of this section and requested a waiver under subsection (d) of this section may be consolidated in a single hearing at the discretion of the OBO director or his designee.

(f) The OBO director shall promulgate written procedures for the conduct of hearings. The OBO director or his designee shall hear each appeal or request for waiver and shall consider only the criteria set forth under subsections (c) and (d)(1) through (d)(4) of this section, as applicable, in determining whether to withdraw the classification of the affected business as an established business enterprise. The OBO director shall develop objective standards for evaluating each factor set forth under subsections (d)(1) through (d)(4) based upon recognized industry or governmental practices or standards. The burden shall be on the business to demonstrate by clear, convincing and cogent evidence either that a material error in classification was made or that the granting of a waiver is justified by at least two of the criteria set forth in subsections (d)(1) through (d)(4) of this section.

(g) Notwithstanding any provision of this Code or of the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, the decision of the OBO director or his designee regarding appeal or waiver shall be final.

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

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

(a) Upon the expiration of one year following the notice of classification as an established business enterprise referenced in section 15-88(a) of this Code, and in the absence of any withdrawal of such classification by the OBO director, each certified MWSBE so classified shall be ineligible for future participation in any city contract as a MWSBE and its certification shall be withdrawn. No application for re-certification shall be granted absent the prior determination of the OBO director that the applicant does not meet or exceed the SBA size standards referenced in section 15-87(a) of this Code. Certified businesses whose evaluation results in classification as an established business enterprise shall timely file any re-certification application due prior to expiration of the one year extension of program eligibility referenced in this section, but the application shall not be granted unless and until the classification is withdrawn or waived.

(b) Notwithstanding any provision of this Code or the rules or regulations of the office of business opportunity to the contrary, including any provision for mediation of a decision of the OBO director, any initial applicant for MWSBE certification who meets the criteria for an established business enterprise at the time of its application and is so classified shall be denied certification on that basis alone and shall have no recourse for the denial except through challenging the classification in the manner set forth in section 15-88 of this chapter. Any and all other matters pertaining to the eligibility of the applicant shall be abated and shall only be reinstated if the classification as an established business enterprise is withdrawn.

(c) The office of business opportunity may continue to assist established business enterprises following ineligibility as follows:

(1) Such businesses, if formerly certified by the city, may continue to be listed in any listing of MWSBE firms in a separate category of established MWSBE firms for the information of other private or public entities; and

(2) Such businesses, if formerly certified by the city, may receive information, counseling and referrals to other agencies supporting business enterprises from the office of business opportunity after their classification as established business enterprises.

(d) No sooner than one year following the date of program ineligibility provided in subsection (a) of this section or the denial of certification provided in subsection (b) of this section, any established business enterprise may apply for reinstatement as a fully eligible, certified MWSBE or reinstatement of an application for certification abated under subsection (b) of this section, as applicable, upon demonstrating the existence of one or more of the following conditions:

(1) That the subsequent history from the date of initial classification as an established business enterprise demonstrates that a size calculation as of the date of application for reinstatement would place the business below the SBA size standards for that category of business;

(2) That the established business enterprise has successfully obtained an SBA size determination from a federal agency authorized to make such a determination, or has prevailed in an SBA size protest under 13 CFR § 121.1001, et seq., as amended, including any judicial review thereof, establishing that the business does not meet or exceed the applicable SBA size standard;

(3) That the SBA size standards have been revised in such a manner that the subject business no longer meets or exceeds the size standard for its category based upon the most recent three-year average for receipts or 12 month average for employees, as applicable; or

(4) That the criteria listed in section 15-88(d) of this Code demonstrate the need to grant a waiver and withdraw the classification of the business as an established business enterprise.

(e) Applications for reinstatement shall be on a form prescribed by the OBO director and shall be accompanied by relevant documentary evidence supporting the ground or grounds for reinstatement asserted, as requested by the OBO director.

(f) Within 30 days following receipt of a completed application for reinstatement, the OBO director shall grant the application or deny the application and set the matter for hearing within 30 days of the date of mailing notice of such denial.

(g) The burden on the business applying for reinstatement shall be to demonstrate the existence of one or more of the conditions set forth in subsections d(1) through d(4) of this section by clear, convincing and cogent evidence, to be evaluated by the director under hearing procedures consistent with the nature of the application and, to the extent applicable, with the provisions of subsections (c), (d), (e) and (f) of section 15-88 of this Code. In addition, a business seeking reinstatement under subsection (b)(4) of this section that has previously sought a waiver of classification as an established business enterprise pursuant to section 15-88(d) of this chapter must present evidence of a material and substantial change in circumstances not shown at the preceding hearing, and the OBO director or his designee shall disregard evidence that is repetitious or cumulative of the prior hearing on the matter.

(h) The decision of the OBO director or his designee following a hearing on reinstatement shall be final, and any applicant denied reinstatement is to be notified in writing of the decision within ten days following the hearing. No business denied reinstatement may subsequently apply for reinstatement until the expiration of one year from the date of the denial.

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

Document 00808

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

CONSTRUCTION CONTRACTS

I. GENERAL

A. CITY AUTHORITIES

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

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

2. The "Contracting Department" for this Project is the City of Houston Department specified in Document 00520 – Agreement.

3. The "Project Manager" for this Project is specified in Document 00550, Contract Approval Notification.

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

A. MWSBE MONTHLY REPORT PROCESS

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

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

III. BUSINESS ENTERPRISE PROGRAM REQUIREMENTS:

A. PURPOSE

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

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

B. POLICY

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

C. POLICY ELEMENTS

1. The Contractor agrees to ensure that MWSBE firms have a full and fair opportunity to participate in the performance of City contracts. In this regard the Contractor shall make all reasonable Good Faith Efforts to meet the Contract Goals for this Contract.

2. The Contractor and any Subcontractor shall not discriminate on the basis of race, color, religion, national origin, or sex in the performance of City contracts.

3. Contractor's performance in meeting the Participation Plan Percentage will be monitored during the construction phase of the Contract by the Office of Business Opportunity ("OBO") and the Contracting Department (the "Department").

D. PERCENTAGE GOALS

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

E. CONTRACTOR RESPONSIBILITIES

1. **Prior to Award:**
The Bidder shall submit MWSBE documents in accordance with the requirements of Document 00410 – Bid Form Part A.

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

b. If the Department cannot approve the Bidder's Plan, it shall forward the Plan to OBO, who shall review the Bidder's Plan, and if applicable, the Bidder's Document 00471 (Record of Good Faith Efforts) and Document 00472 (Pre-Award Deviation Request) and determine whether the Bidder has made Good Faith Efforts to meet the Contract Goals within 10 business days of the Bid Opening.

c. If OBO determines that the Bidder has failed to provide a valid participation plan or make Good Faith Efforts or if the Bidder fails to provide documents and associated information required by this Document 00808 or reasonably requested in writing by OBO, OBO may declare the Bidder to be non-responsible.

d. If OBO determines that the Bidder has made Good Faith Efforts, OBO may approve the Bidder's Contract Goal Deviation request. Thereafter, the Bidder/Contractor shall be bound by the Plan, as approved or modified by OBO.

e. The Contractor shall:

(1) ensure that all MWSBE firms listed in the Plan are certified by the Office of Business Opportunity prior to bid date. Qualified, non-certified firms may obtain priority consideration for certification if no more than two firms are certified with the same capability as the non-certified firm.

(2) execute written contracts with all certified Subcontractors and Suppliers. All such contracts must be executed and sent to OBO and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of Document 00700, General Conditions; and

(3) designate an MWSBE liaison officer who will administer the Contractor's MWSBE program and who shall document and maintain records of Good Faith Efforts to subcontract with MWSBE Subcontractors and Suppliers.

2. After Award:

a. The Contractor shall submit MWSBE Monthly Utilization Reports, as requested in Article II above.

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

c. The Contractor shall conform to the Plan unless OBO approves a

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

d. OBO shall approve a deviation request if:

(1) for a reason beyond the Contractor's control, the Contractor is unable to use the certified MWSBE firm in the Plan to perform the specified work. In such cases, the Contractor shall use and document Good Faith Efforts to find a similarly qualified, certified MWSBE firm to perform such specified work; or

(2) the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the Contracting Department is unlikely to meet the terms of the Plan. In such cases, the Contractor shall use and document Good Faith efforts to achieve a reasonable amount of MWSBE participation on the remaining work on the Contract.

(3) OBO shall not unreasonably withhold approval of a deviation request.

e. After the Date of Substantial Completion, OBO shall evaluate the Contractor's Good Faith Efforts towards meeting the Plan, as it may be amended.

f. If the Contractor fails to conform to the Plan and fails to submit a Post-Award Deviation Request or provide documents and associated information required by the Good Faith Efforts Policy or reasonably requested in writing by OBO, OBO may impose sanctions in accordance with Article VI of this Document 00808.

F. ELIGIBILITY OF MWSBE FIRMS FOR SUBCONTRACTING

1. To ensure that the City's Business Enterprise Program benefits only those firms that are owned and controlled by a minority person(s), a woman (women), a person(s) with a disability, or a small business enterprise, the Office of Business Opportunity will certify the eligibility of MWSBE and PDBE Contractors, Subcontractors, and Suppliers. Contact the OBO Certification Division at 832-393-0600 for information regarding certification.

2. Firms must be certified by OBO at the time of bid in order to be counted towards meeting MWSBE goals. OBO maintains a Certified Minority, Women and Small Business Enterprises and Persons with Disabilities Business Enterprises Directory on the City's website. This Directory also lists federally-designated Disadvantaged Business Enterprises (DBEs).

G. DETERMINATION OF MWSBE PARTICIPATION

MWSBE participation shall be counted toward meeting the Contract Goals in

response to the following:

1. Contractor may count toward its Contract Goals only those MWSBE Subcontractors/ Suppliers performing a Commercially Usefully Function.
   a. **COMMERCIALLY USEFUL FUNCTION** means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the MWSBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the MWSBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including but not limited to the following shall be considered: (1) whether the firm has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses; (2) whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized; and (3) whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract. Without limiting the generality of the foregoing, a MWSBE will not be considered to be performing a commercially useful function, if it subcontracts more than 50 percent of a contract being counted toward the applicable Contract Goals, unless such subcontracting in excess of 50 percent has been expressly approved by OBO either pre-bid or post award.
   b. OBO shall approve a Plan Deviation Request if the Contractor demonstrates that the industry standard for the type of work involved is to subcontract over 50 percent of the work.

2. Once a firm is certified as a MWSBE firm, the total dollar value of the subcontract awarded to the MWSBE firm is counted toward the Contract Goals, counting only the work in which the MWSBE has performed a Commercially Useful Function. The use of one MWSBE certified firm to meet multiple goals (e.g. MBE, WBE, SBE goals) on a contract is prohibited, unless expressly approved by OBO. Safety and Participation goals do not count as a single goal concerning MWSBE/DBE requirements.

3. The dollar value of the work performed by a certified Prime Contractor may not be counted toward the MWSBE goal unless the certified Prime Contractor is a part of a joint venture. When the Contractor or Subcontractor is in a joint venture with one or more MWSBE firms, OBO shall determine the percent of participation resulting from such joint venture to be counted toward the Contract Goals. The City may count towards the Contractor's MWSBE contract goal that portion of the total value of the contract amount paid to an MWSBE joint venturer equal

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

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

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

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

H. CONTRACTOR COMPLIANCE

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

I. RECORDS AND REPORTS

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

2. Contractor shall maintain the following records for review upon request by OBO or the Department:

a. Copies of executed Subcontractor agreements and purchase orders;
b. Documentation of payments and other transactions with MWSBE Subcontractors/ Suppliers; and
c. Appropriate explanations of any changes or replacements of MWSBE Subcontractors/Suppliers. All replacement MWSBE Subcontractors/Suppliers must be certified by OBO.
d. Any other records required by OBO or Contracting Department.

3. If a Participation Plan Percentage is not being met, the monthly report shall include a narrative description of the progress being made in MWSBE participation. If sufficient MWSBE Subcontractors or Suppliers to meet the Participation Plan Percentage are being utilized, they should be identified by name and the dollar amount paid to date for work performed or materials furnished by each MWSBE during the monthly period. Reports are required when no activity has occurred in a monthly period.

4. Contractor shall retain all such records for a period of four years following completion of the Work and shall be available at reasonable times and places for inspection by authorized representatives of the City including the City Controller.

IV. SANCTIONS:

A. SUSPENSION PERIOD AND WAIVER

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

B. GUIDELINES FOR IMPOSITION OF SANCTIONS

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

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

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

(2) The number of specific incidences of failure by Contractor or MWSBE to comply;

(3) Whether the Contractor or MWSBE has been previously suspended;

(4) Whether the Contractor or MWSBE has failed or refused to provide OBO with any information requested by OBO's Director or required to be submitted to OBO's Director pursuant to law or these procedures;

(5) Whether the Contractor or MWSBE has materially misrepresented any applicable facts in any filing or communication to OBO; and

(6) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

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

C. APPEALS

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

D. NOTICE

1. Prior to imposing any suspension, OBO shall deliver written notice to the Contractor or MWSBE setting forth the grounds for the proposed suspension and setting a date, time, and place to appear for an informal conciliation conference with OBO, in addition to information regarding the appearance before the Contract Compliance Commission for a hearing on the matter.

2. Any notice required or permitted to be given hereunder to any Contractor or MWSBE may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to their

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

E. HEARING PROCEDURES

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

ATTACHMENT A

City of Houston
Office of Business Opportunity
Good Faith Efforts Policy

General Policy.

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

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

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

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

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

Pre–Award.

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

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

In making a determination that the bidder has made a good faith effort to meet the Contract Goals, OBO shall consider specific documentation[1] concerning the steps taken to obtain MWSBE participation, with a consideration of, by way of illustration and not limitation, whether the bidder demonstrated a genuine effort to comply with the following factors.

1. Attended any pre-bid or pre-proposal meetings scheduled by the City Department;

2. Followed up with MWSBEs that attended the pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities and contacted MWSBEs listed in the City's online directory;

3. Conducted outreach with minority and women focused organizations and associations far in advance of solicitation due date (no less than 10 business days);

4. Identified and designated portions of the work to be performed by MWSBEs to increase the likelihood of meeting the Contract Goals (including where appropriate breaking down the contract into reasonably sized subcontracts to ensure participation);

5. Advertised subcontracting opportunities in news media focused towards minority and women persons far in advance of solicitation due date;

6. Provided MWSBEs with a point of contact that was knowledgeable about the project and possessed decision-making authority to answer questions from interested MWSBEs;

7. Provided a reasonable number of MWSBEs certified with timely written notices via email, mail, and/or fax and/or with documented contact regarding the subcontracting/supplier opportunities. A "reasonable number of MWSBEs" shall be based on the number of MWSBEs available in the directory;

8. Solicited the MWSBEs within a reasonable amount of time (no less than seven business days) before bid submission, as well as followed up with the MWSBEs solicited to determine if they were interested in submitting a bid or proposal or participating on a team.

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

9. Provided interested MWSBEs certified to perform the solicited work with prompt access to the plans, specifications, scope of work and requirements of the contract;

10. Negotiated in good faith with interested MWSBEs, and not rejecting MWSBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

11. Entered into a formal contract, or signing enforceable letters of intent with MWSBEs;

12. Provided an explanation to any MWSBE whose bid or price quotation is rejected, unless another MWSBE is accepted for the same work, as follows:
    a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected MWSBE firm;
    b. Where price competitiveness is the reason for rejection, a meeting must be held with the price-rejected MWSBE, if requested, to discuss the rejection;

13. Made efforts to assist interested MWSBEs in obtaining bonding, lines of credit, insurance required for the contract, and documenting MWSBE denied by bona fide surety agents;

14. Ensured that the conditions and requirements for subcontracts are commensurate with industry standards and would not cause an economic hardship on MWSBEs, such as unnecessary insurance or coupling bid bonds with retainage;

15. Incorporated efforts not attempted earlier or on previous bids that appear more likely to lead to attaining the Contract Goal. Past performance on similar contracts with similar scopes will also be taken in consideration when determining Good Faith Efforts. A bidder that continues to make same efforts without any significant change in the level of participation may not be making Good Faith Efforts.

Post–Award.

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

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

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

1. Whether the contractor designated an MWSBE liaison officer to administer the Contractor's MWSBE programs and to be responsible for maintenance of records of Good Faith Efforts.

2. Whether the contractor furnished prompt MWSBE Utilization Reports in a timely and accurate manner through the online Contract Monitoring System or via hard copy.

3. Whether the contractor responded to efforts to resolve disputes with MWSBEs, and genuinely attempted to resolve these issues.

4. Whether the contractor disclosed payment discrepancies timely and within the monthly reporting period;

5. Whether the contractor complied with the participation plan, unless the contractor received a deviation from the OBO Director and whether upon approval, the contractor made Good Faith Efforts to replace a removed MWSBE with another certified firm;

6. Whether the contractor furnished prompt written responses to written inquiries from the Director or any employee of OBO regarding the MWSBE's performance or information germane to the MWSBE's certification;

7. Whether the contractor ensured that at all times during the performance of any contract or subcontract the MWSBE firm is engaging in a commercially useful function as that term is defined in Chapter 15 of the City of Houston Code of Ordinances;

8. Whether the contractor provided the OBO information, or other material, that was factually accurate and free of material misrepresentation; and

9. Whether the contractor furnished prompt responses to requests for information, books and records needed to verify compliance from the department administering the Contract, the City Attorney and the City Controller;

10 Whether the contractor attended all meetings and mediation hearings as requested by the Director or his/her designee; and

11. How the contractor may be affected by change orders, with consideration given to the size of the change orders.

Change Orders.

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

END OF DOCUMENT

SECTION 3 REGULATION

APPENDIX TO PART 135

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

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

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

Subpart A—General Provisions

§ 135.1 Purpose.

(a) *Section 3.* The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 170 lu) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low- income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low- income per- sons.

(b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

§ 135.2 Effective date of regulation.

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

[60 FR 28326, May 31, 1995]

§ 135.3 Applicability.

(a) *Section 3 covered assistance.* Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) *Public and Indian housing assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising from the

expenditure of the following public and Indian housing assistance:

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

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

(iii) Modernization assistance pro- vided pursuant to section 14 of the 1937 Act;

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

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

(ii) Housing construction; and

(iii) Other public construction.

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

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

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

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

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

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

(d) *Other HUD assistance and other Federal assistance.* Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

§ 135.5 Definitions.

The terms *Department, HUD, Indian housing authority (IHA), Public housing agency (PHA),* and *Secretary* are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection

with section 3 covered projects (as de- scribed in § 135 3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made avail- able through a HUD housing or com- munity development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-in- come housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean pro- grams that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of "section 3 resident" in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

(1) For HUD housing programs, a geo- graphical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if pro- vided, in the regulations for the applicable community development pro- gram, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for "section 3 covered projects," as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963. *Recipient* means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include con-tractors.

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

Section 3 business concern means a business concern, as defined in this section—

(1) That is 51 percent or more owned by section 3residents; or

(2) Whose permanent, full-time employees include persons, at least 30 per- cent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all sub- contracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Section 3 clause means the contract provisions set forth in § 135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means:

(1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;

(2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;

(3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;

(4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

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

(ii) Housing construction; or

(iii) Other public construction project (which includes other buildings or improvements, regardless of owner- ship).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered con- tracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include con- tracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered con- tract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of owner- ship) assisted with housing or community development assistance.

Section 3 joint venture. See § 135.40.

Section 3 resident means: (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) *A low-income person,* as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single per- sons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) *A very low-income person,* as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that

such variations are necessary because of unusually high or low family in- comes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project re- side. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to under- take a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of ''section 3 resident'' in this section.

Youthbuild programs. See the definition of ''HUD Youthbuild programs'' in this section.

[59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

§ 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however,* that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) Certification of compliance with part 135. All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part

135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.*

(1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed $200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) *Section 3 as NOFA evaluation criteria.* Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be as- signed, will be specified in the NOFA.

§ 135.11 Other laws governing train- ing, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) *Procurement standards for States and local governments (24 CFR 85.36)*—(1) *General.* Nothing in this part 135 pre- scribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement trans- actions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) *Flexible Subsidy Program.* Multi- family project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not per- mitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) *Procurement standards for other recipients (OMB Circular No. A–110).* Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A–110, section 3 is a Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(a) *Federal labor standards provisions.* Certain construction contracts are subject to compliance with the requirement to pay prevailing wages deter- mined under Davis-Bacon Act (40 U.S.C. 276a—276a–7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as deter- mined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in "approved apprenticeship and training programs," as described in paragraph (d) of this section.

(b) *Approved apprenticeship and trainee programs.* Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprentice- ship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(c) *Compliance with Executive Order 11246.* Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended

by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) General. (1) Recipients and covered contractor may demonstrate compliance with the "greatest extent feasible" requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award con- tracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

b. *Training and employment.* The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) *Numerical goals for section 3 covered public and Indian housing programs.* Recipients of section 3 covered public and Indian housing assistance (as described in § 135.5) and their contractors and

subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one period beginning in F Y 1996;

(iii) 30 percent of the aggregate number of new hires for one year period be- ginning in FY 1997 and continuing thereafter.

(2) *Numerical goals for other HUD programs covered by section 3.* (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or sub- contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the man- aging partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or sub- contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or sub- contract awards do not meet the threshold specified in § 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.*
(1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.
(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered de- spite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in § 135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

§ 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the operations of its contractors and sub-contractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures de- signed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in § 135.38 in all solicitations and con- tracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in § 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in § 135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the con- tractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must at- tempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist

local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part

§ 135.34 Preference for section 3 residents in training and employment opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to pro- vide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority pro- vided in paragraph (a) of this section

(1) *Public and Indian housing pro- grams.* In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is ex- pended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is ex- pending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart

B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority;

(iv) Other section 3 residents

(3) Recipients of housing assistance programs administered by the Assist- ant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located

(b) *Eligibility for preference.* A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as de- fined in § 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) *Eligibility for employment.* Nothing in this part shall be construed to re- quire the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

§ 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing pro- grams.* In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 per- cent or more owned by residents of the housing development or developments

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

(ii) Business concerns that are 51 per- cent or more owned by residents of other housing developments or developments managed by the HA that is ex- pending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is ex- pended (category 3 businesses)

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full- time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) *Housing and community development programs* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is de- fined in 42 U S C 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns

(b) *Eligibility for preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in § 135 5

(c) *Ability to complete contract* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if re- quested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed con- tract. (The ability to perform success- fully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 8536 (see 24 CFR 85.36(b)(8))) This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements Section 3 compliance is a matter properly considered as part of this determination.

§ 135.38 Section 3 clause.

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

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from com- plying 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 under- standing, 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, avail- ability 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 con- tractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest ex- tent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.40 Providing other economic opportunities.

(a) *General.* In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) *Other training and employment related opportunities.* Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) *Other business related economic opportunities.* (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including microenterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial sup- port for affiliating with franchise development, use of labor only contracts for building trades, purchase of sup- plies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident- owned businesses. A recipient or con- tractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A *section 3 joint venture* means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D—Complaint and Compliance Review

§ 135.70 General.

(a) *Purpose.* The purpose of this sub- part is to establish the procedures for handling complaints alleging non- compliance with the regulations of this

part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in § 135 76(d)

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or re- fused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed The term ''recipient'' shall have the meaning set forth in § 135 7, which includes PHA and IHA

§ 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of non-compliance made under § 135.76, and with the distribution and collection of data and information that the Assist- ant Secretary may require in connection with achieving the economic objectives of section 3

(b) The recipient shall refrain from entering into a contract with any con- tractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise in- eligible status.

§ 135.74 Section 3 compliance review procedures.

(a) *Compliance reviews by Assistant Secretary* The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) *Form of compliance review.* A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3

(c) *Where compliance review reveals noncompliance with section 3 by recipient or contractor.* Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or con- tractor to comply with the regulations in this part may result in the application of sanctions specified in the con- tract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.

Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) *Conducting compliance review before the award of assistance.* Section 3 compliance reviews may be conducted be- fore the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be un- able or unwilling to comply with the regulations in this part.

(f) *Consideration of complaints during compliance review.* Complaints alleging noncompliance with section 3, as pro- vided in § 135.76, may also be considered during any compliance review con- ducted to determine the recipient's conformance with regulations in this part.

§ 135.76 Filing and processing com- plaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) *Where to file a complaint.* A com- plaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is ex- tended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges non- compliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains in- complete information, the Assistant Secretary shall request the needed in- formation from the complainant. In the event this information is not furnished to the Assistant Secretary with- in sixty (60) days of the date of the re- quest, the complaint may be closed.

(d) *Contents of complaint*—(1) *Written complaints.* Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and ad- dress;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide in- formation to be contained in a com- plaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) *Amendment of complaint.* Com- plaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a com- plaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) Resolution of complaint by recipient. (1) Within ten (10) days of timely filing of a complaint that contains complete

information (in accordance with para- graphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complain- ant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assist- ant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to re- solve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) *Informal resolution of complaint by Assistant Secretary*—(1) *Dismissal of complaint.* Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) *Informal resolution.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assist- ant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) *Effective date of informal resolution.* The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) *Sanctions.* Sanctions that may be imposed on recipients that fail to com- ply with the regulations of this part include debarment, suspension and limited denial of participation in HUD pro- grams.

(h) *Investigation of complaint.* The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of

complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder

(j) *Judicial relief.* Nothing in this sub- part D precludes a section 3 resident or section 3 business concerning from exercising the right, which may other- wise be available, to seek redress directly through judicial procedures

(Approved by the Office of Management and Budget under control number 2529–0043)

Subpart E—Reporting and Recordkeeping

§ 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the pro- gram providing the section 3 covered assistance requires submission of an annual performance report, the section

3 report will be submitted with that annual performance report If the pro- gram providing the section 3 covered assistance does not require an annual performance report, the section 3 re- port is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public

(Approved by the Office of Management and Budget under control number 2529–0043)

§ 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or con- tractor

APPENDIX TO PART 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

(1)Entering into ''first source'' hiring agreements with organizations representing Section 3 residents

(2) Sponsoring a HUD-certified ''Step-Up'' employment and training program for section 3 residents

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in § 135.34) reside

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 per- sons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2

persons reside and in the neighborhood or service area in which a section 3 project is located

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation pro- grams, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or con- tractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as ''force account labor'' in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85 36(d).

(1) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than $25,000, the methods set forth in this para- graph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reason- able number of competitive sources At the time of solicitation, the parties must be in- formed of:

—the section 3 covered contract to be awarded with sufficient specificity;

—the time within which quotations must be submitted; and

—the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation The solicitation shall identify all factors to be considered, including price or cost. The rating system shall pro- vide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than ''X'' higher than the total bid price of the lowest responsive bid from any responsible bidder. ''X'' is determined as follows:

	x=lesser
When the lowest responsive bid is less than $100,000	10% of that bid or $9,000.
When the lowest responsive bid is:	
At least $100,000, but less than $200,000	9% of that bid, or $16,000.
At least $200,000, but less than $300,000	8% of that bid, or $21,000.
At least $300,000, but less than $400,000	7% of that bid, or $24,000.
At least $400,000, but less than $500,000	6% of that bid, or $25,000.
At least $500,000, but less than $1 million	5% of that bid, or $40,000.
At least $1 million, but less than $2 million	4% of that bid, or $60,000.
At least $2 million, but less than $4 million	3% of that bid, or $80,000.
At least $4 million, but less than $7 million	2% of that bid, or $105,000.
$7 million or more	1½% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)). (i) For contracts and sub- contracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as dis- closed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RE- CEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

146.1 Purpose of the Age Discrimination Act of 1975.
146.3 Purpose of HUD's age discrimination regulation.
146.5 Applicability of part.
146.7 Definitions.

Subpart B—Standards for Determining Age Discrimination

146.11 Scope of subpart.
146.13 Rules against age discrimination.

Subpart C—Duties of HUD Recipients

146.21 General responsibilities.
146.23 Notice of subrecipients.
146.25 Assurance of compliance and recipient assessment of age distinctions.
146.27 Information requirements.

Subpart D—Investigation, Settlement, and Enforcement Procedures

146.31 Compliance reviews.
146.33 Complaints.
146.35 Mediation.
146.37 Investigation.
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146.41 Prohibition against intimidation or retaliation.

Texas Administrative Code

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 11 QUALIFIED ALLOCATION PLAN (QAP)
SUBCHAPTER D UNDERWRITING AND LOAN POLICY
RULE §11.306 Scope and Cost Review Guidelines

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should must be included.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that

the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual and/or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

Source Note: The provisions of this §11.306 adopted to be effective December 29, 2019, 44 TexReg 7889

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HOME | TEXAS REGISTER | TEXAS ADMINISTRATIVE CODE | OPEN MEETINGS

APPENDIX 10

APPENDIX 11
MULTIFAMILY RELOCATION REQUIREMENTS, INCLUDING RELATED FORMS

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Regulation

Per HUD, activities and projects assisted by CDBG-DR are subject to the Uniform Relocation Assistance (URA), a federal law which provides important protections and assistance for people affected by the acquisition, rehabilitation, or demolition of real property for federally funded projects.

The URA was enacted by Congress to ensure people whose real property is acquired, or who move as a direct result of projects receiving federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

Activities and projects assisted by CDBG-DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. Programs and projects must adhere to

- **49 CFR Part 24** is the government-wide regulation that implements the URA.
- **HUD Handbook 1378** provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects.
- Housing and Community Development (HCDD) Policies and Procedures.

CDBG-DR Waiver(s)

One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements. Activities and projects undertaken with CDBG–DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.) (''URA'') and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG–DR funds.

The relocation assistance requirements at Section 104(d)(2)(A) of the Housing and Community Development Act and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR Part 24, as modified by the notice for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under the federal register notice.

The HCDD's Residential Anti-displacement and Relocation Assistance Plan (RARAP) will be adhere to when direct or indirect permanent displacement of tenants occur. The following steps are required by subrecipients and developers to minimize the direct and indirect displacement of persons from their homes: Plan construction activities to allow tenants to remain in their units as long as possible, by rehabilitating empty units or buildings first; where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement; adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods; adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas; or target only those properties deemed essential to the need or success of the project.

Monitoring
If Relocation is triggered, periodic monitoring reviews will be conducted to inspect tenant files.

Record Keeping
If Relocation is triggered, relocation tenant files must be made available for periodic monitoring reviews. Tenant files and other related records must be maintained for a 3-years after construction completion.

Forms
All HUD approved forms and templates are provided by HCDD's URA section.

Exhibit 1

Stage	RELOCATION (URA) FOR MULTIFAMILY PROJECTS		
	Project Name Address Houston, TX 770		Project Contact Information
1	Assurance Letter		Submitted fully executed by owner with Application.
1	Relocation Plan		Submitted with Application. Refer to example online at HCDD.
1	Blank Notices		Submitted with Application. Refer to example online at HCDD.
1	Budget		Submitted with Application. Refer to example online at HCDD.
1	Rent Roll		Submitted with Application
1	Site Map		Submitted with Application
1	Notice to Real Property Owner/Seller voluntary acquisition/Right to withdrawal		If Applicable - Submitted with Application. Refer to example online at HCDD.
1	Deed - If property already owned		If Applicable - Submitted with Application
1	General Information Notice Residential TENANT Not Displaced (GIN)		Mailed to Tenant as soon as feasible. Submitted upon request from HCDD-Appendix 2, Handbook 1378. Refer to example online at HCDD.
1	General Information Notice Residential TENANT To Be Displaced (GIN)		Mailed to Tenant as soon as feasible. Submitted upon request from HCDD-Appendix 3, Handbook 1378. Refer to example online at HCDD.
1	Tenant Acknowledgement of GIN Notices		Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
2	Site Occupant Record-Residential. All Tenants		Used for interviewing Tenants. Modified Income Certification form. Submitted to HCDD prior to move of tenant. Refer to example online at HCDD.
2	Income Verification		Submitted to HCDD prior to move of tenant.
2	Tenant Status Report w/ Rent Roll Tenants requiring relocation		Initial Tenant list as of City Council approval date (ION). Include Rent Roll dated as of City Council approval date. (per 1-4, T)Handbook 1378. Refer to example online at HCDD.
2	Notice of Non Displacement		If Applicable-Delivered to Tenant within 10 business days from City Council approval date. Refer to example online at HCDD.
2	Notice of Eligibility		If Applicable-Delivered to Tenant within 10 business days from City Council approval date. Refer to example online at HCDD.
2	Tenant Acknowledgement of Eligibility Determination Notices		Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
3	Temporary Relocation 90 Day Notice		Delivered to Tenant within 10 business days from City Council approval date, but not before eligibility determination. Refer to example online at HCDD.
3	Tenant Acknowledgement		Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
4	Temporary Relocation 30 Day Notice		30 Days Prior to move. Must include rent amount, apt. #, and moving date. Refer to example online at HCDD.

4	Tenant Acknowledgement		Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
4	Transfer 30 Day Notice		30 Days Prior to move. Must include rent amount, apt. #, and moving date. Refer to example online at HCDD.
4	Tenant Acknowledgement		Applicant must have proof tenant received all Notices. (mailed certified, return receipt or hand delivered with tenant signature) Submitted upon request from HCDD.
1-6	Move In Notices w/ updated Rent Roll		If Applicable. Refer to example online at HCDD.
1-6	Skip/Abandonment Notice/Breach of Lease		If Applicable. Must submit tenant's Final Account Statement. Refer to example online at HCDD.
1-6	Eviction/Court Orders		If Applicable. Must submit tenant's Final Account Statement and copy of Court Order.
1-6	Tenant Status Report w/ Rent Roll		Monthly report beginning at ION. Submitted by the 10th of each month.
6	Relocation Compliance Review		Prior to Retainage being paid. Reviews usually begins after first moves.
6	Evidence Relocation Exp. Paid		Prior to Retainage being paid. Must include: Moving Contract, Detailed Invoice, and Check (front and back).

Use this checklist to assemble and evaluate information pertaining to temporary relocation of tenants in rehabilitation projects only (Uniform Relocation Act and related regulations)

Exhibit 2

EXAMPLE/SAMPLE

RELOCATION PLAN

1. Cover Sheet must include:
   - Name of Project
   - Address of Project
   - Name of Owner/Entity
2. Table of Contents:
   - A. Property Summary
     1. Current Demographics
     2. Displaced Persons
   - B. Relocation Destination
   - C. Temporary Relocation Benefits
     1. Tenant Notices
     2. Moving Assistance
     3. Utility Transfers
   - D. Tenant Relocation Benefits
     1. Tenant Notices
     2. Covered Costs
     3. Advisory Services
   - E. Relocation Services
     1. Transportation
     2. Communication
     3. Delinquent Utility Bills
   - F. Relocation Recordkeeping and Notices
     1. Relocation Plan Assurance Letter (sign and dated)
     2. Site Map
     3. Potential Transition of Tenants/Tenant Transition Schedule
     4. Tenant Packet (Include Blank Notices with submission of Plan)
        - General Information Notice
        - Non Displacement Notice and/or
        - Notice of Eligibility
        - Temporary Relocation 90 Day Notice
        - Temporary Relocation 30 Day Notice
        - Transfer Notice 30 Day Notice
     5. Construction Schedule

Project Relocation Specialist Contact Information

Owner Contact Information

A. Project Summary

1. Current Demographics

The property is located in the section of the City of Houston, Texas, specifically at the intersection of ( ) streets. Harris County Key Map page ( ). The project contains a total of acres or approximately ( ) square feet. The shape of the property is generally rectangular with approximately ( ) feet of frontage on the ( ) line of ( ) and ( ) feet on the ( ) line of (). Accessibility to the property is via () Road from the () to () or (). The property is located within the City Limits of Houston and has public water and electric and natural respectively to the site. Telephone service is provided by (). The property is/is not deed restricted as to use and the City of Houston does not subscribe to zoning ordinances. The property was constructed in (); the project has a total of () buildings, () residential and () ancillary (office/community building and laundry). The residential buildings are a mixture of () stories and/or (). There are a total of () units. There are () floor plans which vary from one another by bedroom count and number of bathrooms. This Relocation Plan has been developed due to renovations of the property which is scheduled to start ().

(INSERT CURRENT UNIT MIX TABLE HERE)

Parking is (covered/not covered), the parking and drive are () paved. There are a total of () parking spaces, there are () spaces designated 504 accessible. Project amenities include: () currently () % are/are not restricted by ().

2. Displace Persons

The renovation of the property is expected to take approximately () months and it is "NOT" anticipated that there will be any "displaced persons" who by definition are persons that must move from the property permanently. If it is determined that there are, the plan will be amended to address the special requirements particular to the tenants. These tenants would be given the Notice of Eligibility for Relocation Assistance (see example in Section F) which would inform them of their rights under URA.

B. RELOCATION DESTINATION

There have not been any new leases executed in the last () months in order to have units available to move tenants into. The Relocation Specialist will track the vacant units each month during renovation and submit tracking documentation to HCDD. A tenant transition plan will be

mapped out and submitted to HCDD. This plan will show which tenants will be moved and the new rehabbed units they will be moved to. (See Section F, 3)

If there are no available units onsite the tenant will be provided temporary housing in the development listed below. (Property name) will assure that all temporary housing provided is decent, safe, and sanitary on a non discriminating basis for families or individuals who may be moved offsite.

If it becomes necessary to house tenants in temporary units other than a subsidized housing complex, attempts will be made to find single family units. Rents paid by (your property name) will represent the difference in the tenants current TTP and any additional rent that the tenant must pay. In addition, all relocations off site will be within a five mile radius unless it is in response to a request to a "reasonable accommodation".

(INSERT TABLE WHICH LISTS "DEVELOPMENTS AVAILABLE FOR RELOCATION HERE-Include name and address of property, contact information)

C. TEMPORARY RELOCATION OF TENANTS

1. Tenant Notice

In preparation for the relocations, () will conduct group meetings to notify the tenants of the plans for the complex. In addition to these group meetings, the tenants will also receive written notices of the overall renovation plans and notice of the plans for their relocation. Tenants will be notified that they should not move on their own or contact a mover because they would risk being held responsible for these cost and/or forfeit relocation benefits.

Each tenant will be given a packet of information that is included in Section F of this plan and it includes items mandated via URA. Every attempt will be made to keep the tenants informed and to answer any questions that they may have.

2. Moving Assistance

Moving services will be made available to the tenants. Each resident will be given the option of receiving packing assistance. If a resident prefers to pack their own personal possessions, they will be provided packing supplies. All residents will be provided written notices of their scheduled moving date and time in their 30 day notice. (See Section F, 4)

3. Utility Transfers

A letter will be sent to the utility providers of the property. It will explain the plans for the property renovation and for them to anticipate numerous requests for transfers within a short period of time. The tenant will be responsible for scheduling the transfer of their utilities and are expected to notify the relocation specialist of the date and time the transfer is scheduled. If there are any problems with any transfers the property will have the utilities turned on in the

properties name and the tenant will be given 10 days to resolve the issues with the utility company.

D. TENANT RELOCATION BENEFITS

1. Tenant Notice
Tenants will be given notice of what charges and deposits will be covered in the relocation and they will have to sign it and indicate that they understand that there are no other costs that will be covered.

2. Covered Cost
(Your property name) will pay for packing and moving costs that are scheduled by the relocation specialist. (Your property name) will also cover the cost of deposits or transfer fees for the utilities, any increase in rent of the off site temporary housing, if applicable; and telephone/cable at both the temporary unit and the return to the newly renovated unit. These costs will be paid directly to the providing agency and attached to the tenants unit and head of household. These costs will not be paid on behalf of anyone that moves prior to the coordination efforts of the Relocation Specialist or due to Eviction for Cause.

3. Advisory Services
(Your property name) will contact and interview each person who is affected by the project to discuss his/her needs, preferences, concerns, and to answer questions. (Your property name) will use the Site Occupant Record (Exhibit 8of HCDD Relocation Policy) to record interview of each household. (Your property name) will also provide information about the project and any benefits the tenant may be eligible for; as applicable to the tenants' circumstances (49CFR 24.205(c)).

E. RELOCATION SERVICES

1. Transportation
Relocation of the tenants will be done in phases; the Relocation Specialist will be able to provide the necessary supportive services that may required. If off site housing is used and there is a need, transportation will be provided to the tenant via taxi companies to tour the proposed unit.

2. Communication
Each tenant will be given written information outlining the process and will be given group and individual access to the Relocation Specialist. The tenants that may require special assistance due to a disability will be identified and will be provided assistance in a non-discriminatory manner.

3. Delinquent Utility Bills

If the tenants do not have the financial resources to pay delinquent utility bills that would hinder services being transferred to their temporary unit, the property will have the services temporarily placed under the property name. The tenant would have 10 business days after move-in, to resolve the issue with the respective utility company.

F. RELOCATION RECORDKEEPING AND NOTICES

NOTE: Blank Notices submitted in this section.

RELOCATION PLAN ASSURANCES

I certify that this relocation plan contains accurate information and has been prepared in accordance with 49 CFR Part 24, Uniform Relocation Assistance (URA) and Real Property Acquisition Final Rule and Notice. I further assure that:

1. Relocation staff knows and will follow URA requirements;
2. Relocation staff who will implement this plan are familiar with its contents and the requirements;
3. Sufficient funds have been appropriated, reserved, set aside or otherwise committed to cover the anticipated relocation cost;
4. Families and individuals will have full opportunity to occupy comparable, decent, safe, and sanitary housing;
5. Relocation payments will be made promptly by the borrower and to the full extent for which tenants are eligible;
6. The project activities have been planned in a manner that will minimize hardships to tenants;
7. All tenants will be given a reasonable period of time to move and no one will be required to move unless a comparable replacement unit is available or provided for;
8. Relocation assistance and advisory services will be provided in accordance with the needs of the tenant.

Print Name

Title

Signature

Date

SITE MAP PAGE

Exhibit 3

RELOCATION PLAN ASSURANCES

CDBG/HOME Multifamily Projects

I certify that this relocation plan contains accurate information and has been prepared in accordance with 49 CFR Part 24, Uniform Relocation Assistance (URA) and Real Property Acquisition Final Rule and Notice. I further assure that:

1. Relocation staff knows and will follow URA requirements;
2. Relocation staff who will implement this plan are familiar with its contents and the requirements;
3. Sufficient funds have been appropriated, reserved, set aside or otherwise committed to cover the anticipated relocation cost;
4. Families and individuals will have full opportunity to occupy comparable, decent, safe, and sanitary housing;
5. Relocation payments will be made promptly by the borrower and to the full extent for which tenants are eligible;
6. The project activities have been planned in a manner that will minimize hardships to tenants;
7. All tenants will be given a reasonable period of time to move and no one will be required to move unless a comparable replacement unit is available or provided for;
8. Relocation assistance and advisory services will be provided in accordance with the needs of the tenant.

Print Name

Title

Signature

Exhibit 3

Date

Exhibit 4

Relocation Budget for (Project Name), (Date)

TYPE OF UNIT	Total Number of Units	PACKING & MOVING Cost per Unit	URA Cost per Unit*	Sub-total cost packing & moving per type of unit	Subtotal URA Cost
			0.00	0.00	0.00
			0.00	0.00	0.00
			0.00	0.00	0.00
			0.00	0.00	0.00

TOTAL UNITS	0
TOTAL COST PACKING & MOVING	0.00
TOTAL URA COST	0.00
MISCELLANEOUS COST 10%**	
TOTAL RELOCATION BUDGET	0.00

CHECK YOUR MATH

* URA Cost include transfer fees, non refundable deposits and increased rent for off-site temporary units. Refundable deposits are no longer an eligible cost under the URA.

**Miscellaneous Cost include mail cost and any unforeseen cost of relocation.

Exhibit 5

NOTICE TO REAL PROPERTY OWNER/SELLER

Date: _____

Owner(s)/Seller(s):_____

Buyers(s):_____

Address of Property Under Consideration:_____

Dear Owner(s)/Seller(s):

Property believed to be owned by you is being considered for purchase, as referenced above. Because Federal funds may be used in the purchase of your property, we are required to disclose the following information by the U. S. Department of Housing and Urban Development (HUD) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended (URA), Section 24.101 (b)(2):

1. The proposed sale is voluntary. In the event negotiations fail to result in an agreement, the property will not be acquired by either voluntary purchase or eminent domain.

2. The fair market value of the property is estimated to be $_____. However, since this transaction is voluntary, current or future negotiations may result in a different price that may be the same, higher or lower than this amount.

An owner-occupant who sells his or her property under these terms does not qualify as a displaced person for relocation payments. Additionally, any person who occupies the property for the purpose of obtaining assistance under the URA does not qualify as a displaced person. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

In accordance with HUD requirements, if the information proved above is disclosed after an option to purchase or contract has been executed between the Buyer(s) and the seller(s), the Seller(s) must be provided the opportunity to withdraw from the agreement.

Any title deficiencies, liens, or encumbrances on the property must be cleared prior to any closing. Generally, this is a cost that is borne by the Seller(s) of the property; however payment of these costs may be negotiated between the Buyer(s) and Seller(s). **No federal funds can be used to pay these costs.**

Should you have any questions, please feel free to contact:_____
(Name of Contact Person)

_____ at _____
(Name of City/County/State/Organization/Lender) (Telephone Number)

Receipt acknowledged this_____day of_____, 2010

_____ _____
Seller(s) (Seller(s)

Exhibit 6

NOTICE TO REAL PROPERTY OWNER/SELLER

Date:_____

Owner(s)/Seller(s):_____

Buyers(s):_____

Address of Property Under Consideration:_____

Dear Owner(s)/Seller(s):

Property owned by you has been contracted for purchase, as referenced above. Because Federal funds may be used in the purchase of your property, we are required to disclose the following information by the U. S. Department of Housing and Urban Development (HUD) in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended (URA), Section 24.101 (b)(2):

1. The proposed sale is voluntary. In the event negotiations fail to result in an agreement, the property will not be acquired by either voluntary purchase or eminent domain.

2. The fair market value of the property is estimated to be $_____. However, since this transaction is voluntary, current or future negotiations may result in a different price that may be the same, higher or lower than this amount.

An owner-occupant who sells his or her property under these terms does not qualify as a displaced person for relocation payments. Additionally, any person who occupies the property for the purpose of obtaining assistance under the URA does not qualify as a displaced person. However, tenant-occupants displaced as a result of voluntary acquisition may be entitled to URA relocation assistance and must be informed in writing as soon as feasible.

In accordance with HUD requirements, if the information proved above is disclosed after an option to purchase or contract has been executed between the Buyer(s) and the seller(s), the Seller(s) must be provided the opportunity to withdraw from the agreement.

Any title deficiencies, liens, or encumbrances on the property must be cleared prior to any closing. Generally, this is a cost that is borne by the Seller(s) of the property; however payment of these costs may be negotiated between the Buyer(s) and Seller(s). No federal funds can be used to pay these costs.

Should you have any questions, please feel free to contact:_____
(Name of Contact Person)

_____at_____
(Name of City/County/State/Organization/Lender) (Telephone Number)

Receipt acknowledged this_____day of_____, 2010

_____ _____
Seller(s) (Seller(s)

Exhibit 7

MOVE-IN NOTICE

(GUIDEFORM NOTICE TO PROSPECTIVE TENANT)

Grantee or Agency Letterhead

(date)

Dear _____,

On (date), (property owner) submitted an application to the City of Houston, Housing and Community Development Department for financial assistance under a program funded by the Department of Housing and Urban Development (HUD). The proposed project involves (acquisition) (rehabilitation) (demolition) and/or (conversion) of the property located at (address).

Because Federal funds are planned for use in this project, the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970, as amended (URA) (and/or section 104(d) of the Housing and Community Development Act of 1974, as amended) may apply to persons in occupancy at the time the application was submitted for HUD funding. However, if you choose to occupy this property subsequent to the application for federal financial assistance, as a new tenant you will not be eligible for relocation payments or assistance under the URA (and/or section 104(d)).

This notice is to inform you of the following information before you enter into any lease agreement and/or occupy the property located at the above address:

- You may be displaced by the project.
- You may be required to relocate temporarily.
- You may be subject to rent increase.
- You will not be entitled to any payments or assistance provided under the URA (and/or section 104(d)). If you have to move or your rent is increased as a result of the above project, you will not be reimbursed for any such rent increase or for any costs or expenses you may incur in connection with a move as a result of the projects.

Please read this notification carefully prior to signing a rental agreement and moving into the project. If you should have any questions about this notice, please contact (Grantee or Agency) at (address and telephone number). Once you have read and understood this notice, please sign the statement below if you still desire to lease the unit.

Sincerely,

(Name and title)

_____

Exhibit 7

I have read the above information and understand the conditions under which I am moving into the project.

Print Name of Tenant(s)

Signature(s)

Address and Unit Number

Date

Note:

This is a guideform. It should be revised to reflect the project circumstances.

Site Occupant Record - Residential

Project Name: _____
Project #: _____
Relocation Case #: _____
Acquisition Parcel #: _____

LOCALITY/AGENCY

Date of initial Interview: _____ Interviewer: _____

NAME OF OCCUPANT _____
ADDRESS _____
TELEPHONE NUMBER _____ CENSUS TRACT _____

CHECK: ☐ FAMILY ☐ INDIVIDUAL
☐ OWNER ☐ TENANT

IS THIS ADDRESS LOCATED IN A HUD DESIGNATED RENEWAL COMMUNITY OR EMPOWERMENT ZONE? ☐ YES ☐ NO

DATE OCCUPANT FIRST OCCUPIED THIS DWELLING _____

DATE OF GENERAL INFORMATION NOTICE _____
EFFECTIVE DATE OF NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE _____
DATE PRIVACY ACT STATEMENT EXECUTED _____
(INCLUDE COPY OF NOTICES AND SIGNED PRIVACY ACT STATEMENT IN CASE FILE)

RACIAL/ETHNIC CLASSIFICATION

(CHECK ALL THAT APPLY)
- ☐ AMERICAN INDIAN OR ALASKAN NATIVE
- ☐ ASIAN
- ☐ BLACK OR AFRICAN AMERICAN
- ☐ HISPANIC OR LATINO
- ☐ NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER
- ☐ WHITE
- ☐ AMERICAN INDIAN OR ALASKAN NATIVE AND WHITE
- ☐ ASIAN AND WHITE
- ☐ BLACK OR AFRICAN AMERICAN AND WHITE
- ☐ AMERICAN INDIAN OR ALASKAN NATIVE AND BLACK OR AFRICAN AMERICAN
- ☐ OTHER MULTI-RACIAL

HOUSING COSTS AND CHARACTERISTICS OF DISPLACEMENT DWELLING

TENANT:
MONTHLY CONTRACT RENT $ _____
AVERAGE MONTHLY UTILITY COSTS $ _____
MONTHLY HOUSING COSTS $ _____

OWNER:
MONTHLY MORTGAGE PAYMENT (P&I) $ _____
AVERAGE MONTHLY UTILITY COSTS $ _____
REAL PROPERTY TAXES $ _____
MONTHLY HOUSING COSTS $ _____

NO. OF ROOMS _____ NO. OF BEDROOMS _____
UNIT IS: ☐ HOUSEKEEPING ☐ NONHOUSEKEEPING

APPENDIX 11

SURNAME, GIVEN NAME(S)/SSN(S)	RELA-TION-SHIP	SEX	AGE	OCCUPATION	SOURCE OF INCOME				GROSS MONTHLY INCOME	NAME OF EMPLOYER AND TELEPHONE NUMBER
					EMP.	WELF.	PENS.	OTHER (IDENTIFY)		
									$	

HOUSING REFERRALS

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

REPLACEMENT DWELLING UNIT

DATE OF MOVE _____ ADDRESS _____ CENSUS TRACT _____

IS THIS ADDRESS LOCATED IN A HUD DESIGNATED RENEWAL COMMUNITY OR EMPOWERMENT ZONE? ☐ YES ☐ NO

MONTHLY HOUSING COST (MHC)

☐ RENTAL
MONTHLY RENT $ _____
EST. AVERAGE MONTHLY UTILITY COSTS $ _____
TOTAL MHC $ _____

☐ PURCHASE
MORTGAGE PAYMENT (P&I) $ _____
REAL ESTATE TAXES $ _____
EST. UTILITY COSTS $ _____
TOTAL MHC $ _____
SALES PRICE $ _____

☐ D. S. & S ☐ NOT D. S. & S
DATE OF INSPECTION _____
DATE OF REINSPECTION _____
NO. OF ROOMS _____
NO. OF BEDROOMS _____
(Include copy of Inspection Report in case file.)

RELOCATION PAYMENT(S)

TYPE ☐ MOV.EXP. ☐ ACTUAL ☐ FIXED ☐ RHP RENTAL ☐ DOWNPMT ☐ 180-DAY HO

AMOUNT $ _____ $ _____
DATE CLAIM FILED _____ _____
DATE CLAIM PAID _____ _____
(Include copy of Claim Forms in Case File)

IS UNIT IN AREA OF LOW-INCOME OR MINORITY CONCENTRATION?
☐ YES ☐ NO
IS UNIT SUBSIDIZED?
☐ YES ☐ NO
_____
(Identify)

TEMPORARY HOUSING
DATE _____ REASON _____
ADDRESS _____ RENTAL $ _____
DATE OF MOVE TO PERMANENT DWELLING _____
OUT-OF-POCKET EXPENSES PAID:
MOVING EXPENSES $ _____
INCREASED HOUSING COSTS $ _____

APPEAL FILED: ☐ YES ☐ NO
IF YES, INDICATE TYPE:
☐ PAYMENT(S)
☐ HOUSING
☐ OTHER _____
(Include copy of Appeal in Case File)

APPENDIX 11

Exhibit 9

INSTRUCTION FOR FILLING OUT AND UPDATING THE TENANT STATUS REPORT

1. R
un a Rent Roll on the date City Council approves project contract. This is your Initiation of Negotiations (ION) date. Import information for columns, Move In Date, Resident Name, Unit #, Size/Type. This is the list of residents you must track during the renovation period.
2. Update spreadsheet information monthly and submit to HCDD by the 10th of each month with all documentation pertaining to tenants for that month. Such as, copies of Notices addressed to tenants w/ receipts, move out checklists, final account statements, evictions (court order), transfers, temporary relocations, final moves w/ leases, etc.
3. If you need to add columns or rows to include any of these headings or to add new tenant names to a vacant units please do so.
4. **Please do not remove any previous monthly information.** If column does not pertain to your project please type N/A.
5. Please note if tenant is a: Move In, Skip, Lease Ended-gave notice, Lease Ended-no reason given, or Eviction, in the Reason for Move Out (Comment) column.

Please contact your Relationship Manager at 713-868-8300 or Elizabeth Spinnenweber at 713-868-8426 if you have any questions. Thank you.

Exhibit 9

TENANT STATUS REPORT

as of :_____

Project Name and Address

Contact Information

Move In Date	Resident Name	Unit #	Size-Type	General Info Ltr Date	90 Day Notice Date	Temporary Relocation 30 Day Notice Date	Site Occupant Record/Income Verified Date	Move Out Date	Reason for move out (Comments)	Unit # Temporary Relocation/ Transferred to	Size-Type	Unit # final move	Movers Cost

APPENDIX 11

Exhibit 10

GUIDEFORM GENERAL INFORMATION NOTICE
RESIDENTIAL TENANT NOT DISPLACED

Grantee or Agency Letterhead

(date)

Dear _____:

___(City, County, State, Public Housing Authority (PHA), other)_____, is interested in rehabilitating the property you currently occupy at ___(address)_____ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program.

The purpose of this notice is to inform you that you will not be displaced in connection with the proposed project.

If the project application is approved and federal financial assistance provided, you may be required to move temporarily so that the rehabilitation can be completed. If you must move temporarily, suitable housing will be made available to you and you will be reimbursed for all reasonable out of pocket expenses, including moving costs and any increase in housing costs. You will need to continue to pay your rent and comply with all other lease terms and conditions.

Upon completion of the rehabilitation, you will be able to lease and occupy your present apartment or another suitable, decent, safe and sanitary apartment in the same building/complex under reasonable terms and conditions. *

If federal financial assistance is provided for the proposed project, you will be protected by a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). One of the URA protections for persons temporarily relocated is that such relocations shall not extend beyond one year. If the temporary relocation lasts more than one year, you will be contacted and offered all permanent relocation assistance as a displaced person under the URA. This assistance would be in addition to any assistance you may receive in connection with temporary relocation and will not be reduced by the amount of any temporary relocation assistance previously provided. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered.

(NOTE: **Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)**

We urge you not to move at this time. If you choose to move, you will not be provided relocation assistance.

Please remember:

- **This is not a notice to vacate the premises.**
- **This is not a notice of relocation eligibility.**

You will be contacted soon so that we can provide you with more information about the proposed project. If the project is approved, we will make every effort to accommodate your needs. In the meantime, if you have any questions about our plans, please contact:
(name)_____, (title)_____,
(address)_____, (phone)_____.

Sincerely,

(name and title)_____

Enclosure

NOTES.

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.

* *Based on the applicable HUD program regulations, if "reasonable terms and conditions," are defined, one of the following statements or other language may also be required in this Notice:*

a. *Under HOME at 24 CFR 92.353(c)(2)(C)(1):* "Your new lease will be for a term of not less than one year at a monthly rent will remain the same or, if increased, your new monthly rent and estimated average utility costs will not exceed: 1) if you are low income, the total tenant payment as defined by HUD *(under 24 CFR 5.628), or (2)* 30% of the monthly gross household income, if you are not low income."

b. *Under CDBG at 24 CFR 570.606(b)(2)(D)(1):* "Your monthly rent will remain the same or, if increased, your new rent and estimated average utility costs will not exceed 30% of the household's average monthly gross income."

c. *Under Section 221 Mortgage Insurance Programs under 24 CFR 221.795(i):* "Your monthly rent and estimated average utility costs will not exceed the amount approved by HUD."

Exhibit 11

GUIDEFORM GENERAL INFORMATION NOTICE
RESIDENTIAL TENANT TO BE DISPLACED

Grantee or Agency Letterhead

(date)

Dear _____

_____(City, County, State, Public Housing Authority (PHA), other)_____, is interested in _____(acquiring, rehabilitating, demolishing)_____ the property you currently occupy at ____(address)___ for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program.

The purpose of this notice is to inform you that you may be displaced as a result of the proposed project. This notice also serves to inform you of your potential rights as a displaced person under a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). You may be eligible for relocation assistance and payments under the URA, if the proposed project receives HUD funding and if you are displaced as a result of acquisition, rehabilitation or demolition for the project.

- **This is not a notice to vacate the premises.**
- **This is not a notice of relocation eligibility.**

If you are determined to be eligible for relocation assistance in the future, you may be eligible for: 1) Relocation advisory services including help to you find another place to live; 2) At least 90 days advance written notice of the date you will be required to move; 3) Payment for your moving expenses; and 4) Replacement housing payments to enable you to rent, or if you prefer to purchase, a comparable replacement home. You will also have the right to appeal the agency's determination, if you feel that your application for assistance was not properly considered. The enclosed HUD brochure, "Relocation Assistance To Tenants Displaced From Their Homes" provides an explanation of this assistance and other helpful information.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Please be advised that you should continue to pay your rent and meet any other obligations as specified in your lease agreement. Failure to do so may be cause for eviction. If you choose to move or if you are evicted prior to receiving a formal notice of

relocation eligibility you will not be eligible to receive relocation assistance. It is important for you to contact us before making any moving plans.

Again, this is not a notice to vacate the premises and does not establish your eligibility for relocation payments or assistance at this time. If you are determined to be displaced and are required to vacate the premises in the future, you will be informed in writing. In the event the proposed project does not proceed or if you are determined not to be displaced, you will also be notified in writing.

If you have any questions about this notice or the proposed project, please contact (name)_____, (title)_____, (address)_____, (phone)_____.

Sincerely,

(name and title)_____

Enclosure

NOTES

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.
3. Optional paragraphs for displaced residents of public housing projects (may be modified based on the PHA's resident return policy):

> "Even though you will be provided all of the assistance the URA requires for a permanent move, the Authority believes that every resident displaced from the site should have the right to reapply for occupancy once this project is complete. For this reason, after project completion, every resident who receives assistance as a "displaced person" will be contacted and offered an opportunity to reapply for occupancy in the newly-revitalized community. Furthermore, because you will be a former occupant who was "displaced" from the site, you will also receive a priority preference to return.
>
> In the event the number of those who request to return and qualify for housing exceeds the number of units available, rating and ranking criteria will be used to identify those who will be offered a unit at the site until all available units are filled. If you do return, the Authority may help defray the costs of the return move. If you have Replacement Housing Payments not yet spent or obligated, you may be asked to forfeit these payments as a condition for returning to public housing, since this assistance will no longer be necessary to meet your housing needs. Such assistance, if not forfeited, must be considered as income and may affect your eligibility and rent."

Exhibit 12

GUIDEFORM NOTICE OF NONDISPLACEMENT
TO RESIDENTIAL TENANT
Grantee or Agency Letterhead

(date)

Dear _____:

On ___(date)___, the ___(City, County, State, Public Housing Authority (PHA), other)___ notified you of proposed plans to rehabilitate the property you currently occupy at (address)_____ for a project which could receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program. On ___(date)___, the project was approved and will receive federal funding. Repairs will begin soon.

- This is a notice of nondisplacement. You will not be required to move permanently as result of the rehabilitation.

This notice guarantees you the following:

1. Upon completion of the rehabilitation, you will be able to lease and occupy your present apartment or another suitable, decent, safe and sanitary apartment in the same building/complex under reasonable terms and conditions. *
2. If you must move temporarily so that the rehabilitation can be completed, you will be reimbursed for all of your extra expenses, including the cost of moving to and from temporary housing and any increased interim housing costs. The temporary unit will be decent, safe and sanitary, and all other conditions of the temporary move will be reasonable.

Since you will have the opportunity to occupy a newly rehabilitated apartment, I urge you not to move. (If you do elect to move for your own reasons, you will not receive any relocation assistance.) We will make every effort to accommodate your needs. Because federal funding is involved in this project, you are protected by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Of course, you must continue to comply with the terms and conditions of your lease.

If you have any questions, please contact *(name)*, at *(phone)*, *(address)*. This letter is important to you and should be retained.

Sincerely,

(name and title)

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

Exhibit 12

NOTES.

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 1 of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.

* *Based on the applicable HUD program regulations, if "reasonable terms and conditions," are defined, one of the following statements or other language may also be required in this Notice:*

a. *Under HOME at 24 CFR 92.353(c)(2)(C)(1):* "Your new lease will be for a term of not less than one year at a monthly rent will remain the same or, if increased, your new monthly rent and estimated average utility costs will not exceed: 1) if you are low income, the total tenant payment as defined by HUD *(under 24 CFR 5.628), or (2)* 30% of the monthly gross household income, if you are not low income."

b. *Under CDBG at 24 CFR 570.606(b)(2)(D)(1):* "Your monthly rent will remain the same or, if increased, your new rent and estimated average utility costs will not exceed 30% of the household's average monthly gross income."

c. *Under Section 221 Mortgage Insurance Programs at 24 CFR 221.795(1):* "Your monthly rent and estimated average utility costs will not exceed the amount approved by HUD."

[10/

Exhibit 13

GUIDEFORM NOTICE OF ELIGIBILITY FOR
URA RELOCATION ASSISTANCE
RESIDENTIAL TENANT

Grantee or Agency Letterhead

(date)

Dear _____:

On ___(date)___, the ____(City, County, State, Public Housing Authority (PHA), other)___, notified you of proposed plans to ___(acquire, rehabilitate, or demolish)____ the property you currently occupy at ___(address)_____ for a project which could receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) under the _____ program. On ____(date)_____, the project was approved and will receive federal funding.

It has been determined that you will be displaced by the project. Since you are being displaced in connection with this federally funded project, you will be eligible for relocation assistance and payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA).

- **This is your Notice of Eligibility for relocation assistance**
- **The effective date of your eligibility is** _____. *(Insert date of Initiation of Negotiations, see 49 CFR 24.1(a)(15) or applicable HUD program regulations)*

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

To carry out the project, it will be necessary for you to move. However, you do not need to move now. You will be provided written notice of the date by which you will be required to move. This date will be no less than 90 days from the date comparable replacement housing has been made available to you.

Enclosed is a brochure entitled, "Relocation Assistance to Tenants Displaced From Their Homes." Please read the brochure carefully. It explains your rights and provides additional information on eligibility for relocation payments and what you must do in order to receive these payments.

Exhibit 13

The relocation assistance to which you are entitled includes:

Relocation Advisory Services. Including counseling and other assistance to help you find another home and prepare to move.

Payment for Moving Expenses. You may choose: (1) a payment for your actual reasonable moving and related expenses, or (2) a fixed moving payment in the amount of $_____ based on the URA Fixed Residential Moving Cost Schedule, or (3) a combination of both.

Replacement Housing Payment. You may be eligible for a replacement housing payment to rent or buy a replacement home. The payment is based on several factors including: (1) the monthly rent and cost of utility services for a comparable replacement dwelling, (2) the monthly rent and cost of utility services for your present home, and (3) for low-income persons, 30 percent of your average monthly gross household income. This payment is calculated on the difference in the old and new housing costs for a one-month period and multiplied by 42.

Listed below are three comparable replacement dwellings that you may wish to consider for your replacement home. If you would like, we can arrange transportation for you to inspect these and other replacement dwellings.

	Address	Rent & Utility Costs	Contact Info
1.			
2.			
3.			

We believe that the dwelling located at ___*(address)*___ is the most representative of your present home. The monthly rent and the estimated average monthly cost of utilities for this dwelling is $_____ and it will be used to calculate your maximum replacement housing payment. Please contact us immediately if you believe this dwelling is not comparable to your current home. We can explain our basis for selecting this dwelling as most representative of your current home and discuss your concerns.

Based on the information you have provided about your income and the rent and utilities you now pay, you may be eligible for a maximum replacement housing payment of approximately $_____ (42 x $____), if you rent the dwelling identified above as the most comparable to your current home or rent another dwelling of equal cost.

Replacement housing payments are not adjusted to reflect future rent increases or changes in income. This is the maximum amount that you would be eligible to receive. If you rent a decent, safe and sanitary home where the monthly rent and average estimated utility costs are less than the comparable dwelling, your replacement housing payment will be based on the actual cost of the dwelling. We will not base your payment on any dwelling that is not a comparable replacement home. All replacement housing payments must be paid in installments. Your payment will be paid in _#_ installments.

Should you choose to purchase (rather than rent) a decent, safe and sanitary replacement home, you would be eligible for a downpayment assistance payment which is equal to your maximum replacement housing payment, $_____*. Let us know if you are interested in purchasing a replacement home and we will help you locate such housing.

Please note that all replacement housing must be inspected in order to ensure it is decent, safe and sanitary before any replacement housing payments are made.

If you have any questions about this letter and your eligibility for relocation assistance and payments, please contact _____(*name*)_____, _____(*title*)_____ at (*phone*)_____, _____(*address*)_____ before you make any moving plans. He/she will assist you with your move to a new home and help ensure that you preserve your eligibility for all relocation payments to which you may be entitled.

Remember, do not move or commit to the purchase or lease of a replacement home before we have a chance to further discuss your eligibility for relocation assistance. This letter is important to you and should be retained.

Sincerely,

_____(name & title)_____

Enclosure/s

NOTES.

* At the agency's discretion, a downpayment assistance payment that is less than $5,250 may be increased to any amount not to exceed $5,250. (See 49 CFR 24.402(c)(1))

1. The case file must indicate the manner in which this notice was delivered (e.g., personally served or certified mail, return receipt requested) and the date of delivery. (See Paragraph 2-3 I of Handbook 1378.)
2. This is a guideform. It should be revised to reflect the circumstances.
3. Optional paragraphs for displaced residents of public housing projects (may be modified based on the PHA's resident return policy):

Exhibit 13

"Even though you will be provided all of the assistance the URA requires for a permanent move, the Authority believes that every resident displaced from the site should have the right to reapply for occupancy once this project is complete. For this reason, after project completion, every resident who receives assistance as a "displaced person" will be contacted and offered an opportunity to reapply for occupancy in the newly-revitalized community. Furthermore, because you will be a former occupant who was "displaced" from the site, you will also receive a priority preference to return.

In the event the number of those who request to return and qualify for housing exceeds the number of units available, rating and ranking criteria will be used to identify those who will be offered a unit at the site until all available units are filled. If you do return, the Authority may help defray the costs of the return move. If you have Replacement Housing Payments not yet spent or obligated, you may be asked to forfeit these payments as a condition for returning to public housing, since this assistance will no longer be necessary to meet your housing needs. Such assistance, if not forfeited, must be considered as income and may affect your eligibility and rent."

Exhibit 14

Temporary Relocation 90 DAY NOTICE Guide-form

Property Name
Property Address

Date

Dear (resident),

On (GIN date), (property name) notified you of proposed plans to rehabilitate the property you currently occupy at (address). The project was approved and repairs/rehab will begin 90 days from this notice. We hope you are pleased and excited about the improvements that we will be making to the property to improve safety and attractiveness.

> This is your notice that construction will start in 90 days. Do NOT move now. If you choose to move on your own, you will not be provided relocation assistance.

On (date), (property name) will begin moving tenants to their temporary/permanent units if necessary. During this 90 day period (contact name, phone number) will be available to provide assistance and answer any questions you may have. (Describe assistance provided here)

Your temporary/permanent address will be:

Please transfer your utilities over to your temporary/permanent location on this date: _____.
We will help you to move to the new unit at a date to be mutually satisfactory.

Before moving you the (Property name) must (re)certify your income and lease.
Please call (contact name, phone number) or stop by the office to schedule an appointment to meet. Please bring these documents with you to this meeting. (List docs needed) At this time we will give you your new keys and sign your replacement lease.

We will remind you again about this information and let you know the exact date of your move in a (Temporary Relocation/Transfer) 30 Day Notice. Please do not move now.

If you have any questions about this 90 day notice or the relocation process, please call (contact name, phone number) or come to the leasing office. We appreciate your patience during construction. Thank you.

Sincerely,

_____

Date Delivered:
Delivered By:

(and/or)
Resident Signature:

NOTE:
This notice may be modified to reflect your projects' circumstances and may be combined with the Non Displacement Notice and/or Notice of Eligibility. If you choose to do this; Please include all information from this notice.

Exhibit 15

Temporary Relocation/Transfer 30 Day Notice

LETTERHEAD

30 DAY NOTICE TO MOVE

DATE

Dear (resident name and unit #)

By letter dated (date), (property name) notified you of the plans to rehabilitate (property name). And by letter dated (date) you received your Temporary Relocation 90 day notice of the upcoming move.

Your (new/temporary) unit is ready and located at (property address), apartment # (_). In order to prepare for your move boxes will be delivered on (date). Your new rent will be $_____.

Since your unit is ready, your move has been scheduled for (date after30 days). Please insure that all packing has been completed, and your utilities have been transferred. Please feel free to contact the Relocation Specialist (name) at (#) to sign your paperwork and obtain your keys.

Once again thank you for your cooperation.

(name)

(title)

Resident Signature

Date Received

Exhibit 16

HUD Handbook 1378 - Chapter 6 - Recordkeeping and Reports

Found at website www.hud.gov/relocation or request copy from

Housing and Community Development Department.

Exhibit 17

NOTICE TO VACATE FOR BREACH OF LEASE
Guide-form

_____ _____
(Date)

_____
(Name of all residents)

_____
(Street address and swelling unit number, if applicable)

_____
(City, State, Zip)

Re: Notice to vacate for breach of lease

TAA Lease Contract dated _____

between residents named above and _____

_____

(owner)

Dear Resident (s):

You have violated your lease contract as noted below:

Lease Paragraph or Rule Number: _____

Name of Resident, occupant or guest in violation (if known): _____

Nature of Violation (specific facts): _____

_____

On (date) you received a General Information Notice informing you of the planned renovations and telling you that in order to be eligible for relocation assistance you must comply with your lease terms and conditions.

This was a substantial breach of your TAA Lease Contract and has jeopardized any assistance you may have qualified for under the Uniform Relocation Act. We are there fore exercising our right under the lease to terminate your rights of occupancy and possession, effective immediately. You are still liable for rent and other charges you may owe under the lease. If you have not already moved out, demand for possession is hereby made and you are hereby given notice to vacate the premises on or before midnight, _____, _____, which is at least one day from the delivery of this notice as noted below (four days if the notice was mailed). Failure to move out by then will result in an eviction suit being filed and a hearing held before the Justice of the Peace. Delay or postponement of such action does not waive our rights.

_____ _____
DATE: notice was given by the method below SIGNATURE of the owner's representative

The notice was: *(check at least one)*

- ☐ hand delivered to any one of the residents named above;
- ☐ hand delivered to any person 16 or older residing in the dwelling;
- ☐ posted on the inside of the dwelling's main entry door (not the screen door) that has a keyless bolting device or keyless deadbolt on it;
- ☐ sent by regular mail;
- ☐ sent by certified mail, return receipt request; or
- ☐ sent by registered mail.

Appendix 12

Reserved

Appendix 13

GLO Lien Waiver Form

Texas General Land Office
Community Development and Revitalization
Form 11.25
Conditional Lien Waiver and Release on Interim Payment Affidavit – Contractor

Project Information	
Subrecipient or State Representative's Name:	**Contract and/or WO:**
Applicant Name and Address:	**Project #:**
Project Legal Description:	
Project Type (Rehabilitation, Reconstruction, etc.):	

Contractor Information	
Contractor Name and Address ("Contractor"):	**Phone:**
Contractor Requested Amount: $	

On receipt by the signer of this document, payment from the Subrecipient in the requested amount (listed above) will be made, payable to the aforementioned Contractor; subsequently, when the payment has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the project's legal description to fulfill the scope of the project.

This release covers the interim payment to the signer for all labor, services, equipment, or materials furnished to the property or to the Subrecipient as indicated in the attached statement(s) or interim payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

Except as specified above, the signer warrants that the signer has already paid or will use the funds received from this interim payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above-referenced project in regard to the attached statement(s) or interim payment request(s).

Contractor further understand that this Affidavit is being given pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code and that the intentional, knowing, or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

The General Land Office may recapture funds that exceed the maximum allowable rate as outlined in the Program's guidelines; that are not allowed under applicable laws, rules and regulations; or that are otherwise inconsistent with the Contract, including any unapproved expenditures.

The undersigned acknowledges that a failure to accurately certify full and final payment of all bills associated with this contract document will result in exclusion from participation in future contracts that utilize CDBG-DR funds.

Prior to payment, Form 11.11 will need to be submitted to the GLO along with Form SD-424D (Assurances – Construction Programs) and a complete insurance binder for the Subcontractor. The Subrecipient is responsible for ensuring the Contractor remains insured throughout the project and/or until their work is complete and satisfactorily agreed upon.

Certification of Contractor	
Printed Name of Contractor Company:	
Name of Authorized Representative:	**Title:**
Signature of Authorized Representative:	**Date:**

Notary's Acknowledgment	
State of Texas **County of** Before me, a notary public, on this day personally appeared , known to me to be the person whose name is that subscribed to the foregoing document and, being by me first duly sworn, declared the statements therein contained are true and correct.	
Signature of Notary	
Notary Public State of Texas – Printed Name	**NOTARY SEAL**
Date Notary's Commission Expires	

Texas General Land Office
Community Development and Revitalization
Form 11.22
Conditional Lien Waiver and Release on Interim Payment Affidavit – Subcontractor

Project Information	
Subrecipient or State Representative's Name:	**Contract and/or WO:**
Applicant Name and Address:	**Project #:**
Project Legal Description:	
Project Type (Rehabilitation, Reconstruction, etc.):	

Subcontractor Information	
Subcontractor Name and Address ("Subcontractor"):	**Phone:**
Subcontractor Requested Amount: $	

On receipt by the signer of this document, payment from the Contractor in the requested amount (listed above) payable to the aforementioned Subcontractor will be paid; subsequently, when the payment has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the project's legal description to fulfill the scope of the project.

This release covers the interim payment to the signer for all labor, services, equipment, or materials furnished to the property or to the Contractor as indicated in the attached statement(s) or interim payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

Except as specified above, the signer warrants that the signer has already paid or will use the funds received from this interim payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or interim payment request(s).

Subcontractor further understand that this Affidavit is being given pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code and that the intentional, knowing, or reckless making of a false or misleading statement in this Affidavit constitutes an offense under said Section and is a Class A misdemeanor.

The undersigned acknowledges that a failure to accurately certify full and final payment of all bills associated with this contract document will result in exclusion from participation in future contracts that utilize CDBG-DR funds.

Prior to payment, Form 11.11 will need to be submitted to the GLO along with Form SD-424D (Assurances – Construction Programs) and a complete insurance binder for the Subcontractor. The Subrecipient is responsible for ensuring the Subcontractor remains insured through the project, and/or until their work is complete and satisfactorily agreed upon.

Certification of Subcontractor	
Printed Name of Subcontractor Company:	
Name of Authorized Representative:	**Title :**
Signature of Authorized Representative:	**Date :**

Notary's Acknowledgment
State of Texas **County of** Before me, a notary public, on this day personally appeared , known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct. **Signature of Notary** **Notary Public State of Texas – Printed Name** **NOTARY SEAL** **Date Notary's Commission Expires**

APPENDIX 14
MINIMUM PROPERTY STANDARDS

CITY OF HOUSTON

HOUSING AND COMMUNITY DEVELOPMENT

Minimum Property Standards For New Construction, Reconstruction, Rehabilitation, & Maintenance of Multifamily Facilities

APPENDIX 14

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APPENDIX 14

INTRODUCTION

This document is intended to provide the Minimum Property Standards (MPS) for new construction, reconstruction, rehabilitation, and maintenance of multifamily housing facilities that receive federal assistance through the City of Houston Housing & Community Development Department as required by 24CFR §200.925. The primary objective of the Minimum Property Standards is to establish the criteria for the life, health and safety of the residents at the property.

Pursuant to 24CFR§92.251, housing that is constructed or rehabilitated with HOME or CDBG funds must meet all applicable local codes, ordinances, and rehabilitation standards, at the time of project completion. In the absence of a local code addressing new construction, reconstruction, or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, International Building Code (IBC) or its appropriate sub code, and/or the Minimum Property Standards(MPS) in 24CFR§200.925 and §200.926. Housing must meet the accessibility requirements at 24CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29U.S.C.§794) and covered multifamily dwellings, as defined at 24CFR§100.201, and must also meet the design and construction requirements at 24CFR §100.205, which implement the Fair Housing Act (42U.S.C.§3601-§3619).

The MPS supplement local building codes by requiring properties to meet minimum standards of workmanship, durability and performance of various components of the multifamily property during the period of affordability. These components would include doors, windows, gates, stairwells, wall coverings, kitchen cabinets, carpeting, etc. of the property that would be maintained in good and safe working condition that ensures the life, health and safety of the residents at the property.

To achieve this objective, the Housing & Community Development Department conducts an annual inspection of the property in accordance with the 24CFR§92.251(a) and all local codes, construction standards, and city ordinances. Findings identified during the inspection are required to be resolved by the property owner and management. All repairs, materials, and installations must be meet the aforementioned standards of quality and workmanship.

Director's signature	Date Director Signed
	6/5/2011

DEFINITIONS

A. **ACCESSORY BUILDING** — A subordinate building or structure that is devoted exclusively to the main use of the property and is located on the property.

B. **ADA**— Americans with Disabilities Act.

C. **BATHROOM** — A room with a toilet and a lavatory sink in or near that room, with or without a bathtub or shower.

D. **BUILDING AREA** — Any structure used or intended to be used for supporting or sheltering any use or occupancy.

E. **CERTIFIED PROFESSIONAL** —Is one who is knowledgeable and qualified in type of work being performed; one who shows either by experience or academic qualifications, to be able to meet the industry standards for the work being performed.

F. **DEBRIS** — Includes but is not limited to garbage, rubbish, refuse, or wrecked, decayed, dilapidated, or inoperative vehicles or machinery, and parts thereof.

G. **DWELLING** — A building or structure, or any part of it, occupied or capable of being lawfully occupied, in whole or in part, for the purpose of human habitation and includes a dwelling unit and a building that would be used for this purpose except for its state of disrepair.

H. **DWELLING UNIT** — A room or a suite of rooms operated as a housekeeping unit, used or intended to be used as a domicile by 1 or more persons and supporting general living conditions and includes cooking, eating, sleeping, and sanitary facilities.

I. **EGRESS** – A permanent and unobstructed means of exiting from the dwelling in an emergency escape or rescue situation.

J. **ENERGY STAR RATED** – Includes all systems, components, equipment, fixtures and appliances that meet strict energy efficiency performance criteria established, as a joint effort, by the federal Environmental Protection Agency, the U.S. Department of Energy and the U.S. Department of Housing and Urban Development and that carry the Energy Star label as evidence of meeting the energy efficiency performance criteria.

K. **FAIR HOUSING ACT (24CFR§100.25)** — Federal law that prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and insurance companies whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, family status or disability.

L. **GRAFFITI** — Any unauthorized inscription, mark, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise applied to any surface of public or private property to the extent that the graffiti was not authorized in advance by the owner or occupant of the property.

M. **GROUND COVER** — Suitable material applied to the ground to prevent erosion of the soil and includes concrete, flagstone, gravel, asphalt, grass or other form of landscaping.

N. **HABITABLE ROOM** — A room in a dwelling designed, lawfully used or capable of being lawfully used for living, sleeping, cooking or eating purposes. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas (rooms) are not considered habitable spaces (rooms).

O. **HANDRAIL** — A continuously graspable rail forming the top part of a balustrade or guard on stairs, landings, raised walkways and ramps adhered to a wall or a guard forming part of the stair, landing, walkway or ramp intended to provide guidance and support to the user and to arrest falls.

P. **MINIMUM PROPERTY STANDARDS (MPS)** — The standards for the maintenance and occupancy prescribed for a multifamily property. Using these standards as a baseline for monitoring, a housing inspector identifies the physical deficiencies of a property and dwelling unit that need to be repaired.

Q. **MULTIFAMILY DWELLING**— A building containing 3 or more dwelling units.

R. **NONHABITABLE FLOOR AREA** — Any room or space in a dwelling, or dwelling unit, other than a habitable room and includes a washroom, bathroom, toilet room, laundry, pantry, lobby, communicating corridor, stairway, closet, boiler room, garage, or space for service and maintenance of any building for public use and for access to and vertical travel between stories.

S. **NONRESIDENTIAL PROPERTY** — Land, a building or structure used or capable of being used for other than residential purposes.

T. **OCCUPANCY** — The use or intended use of a building or part of a building for the shelter or support of persons, animals or property as established by the Building Code and city ordinances.

U. **PEST**— Any mouse, rat, bed bug, flea, wasp, hornet or cockroach, but does not include and domesticated mouse or rat

V. **PROPERTY** — A building or structure or part of a building or structure and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences, retaining walls and erections thereon whether heretofore or hereafter erected, and includes vacant property.

W. **REPAIR** — Includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a property conforms with the standards established in a by-law passed under this section. All repairs shall be made in a good workmanlike manner with materials that are suitable and sufficient for the purpose and free from defects. The requirement that repairs be made in a "good workmanlike manner" includes, ensuring the component repaired can perform its intended function and finishing the repair in a manner reasonably compatible in design and color with adjoining decorative finishing materials. Repairs shall be made with "materials that are suitable and sufficient for the purpose" includes a requirement for materials reasonably compatible in design and color with adjoining decorative finishing materials.

X. **RESIDENTIAL PROPERTY** — Land, a building or structure used, capable of being used, designed or intended for residential use.

Y. **RETAINING WALL** — A wall or similar structure built to hold back, confine, or sustain the pressure from a bank of earth, loose stone or fill material separating two grade levels

Z. **SANITARY FACILITIES** — A room or rooms containing 1 or more toilets, washbasins, bathtubs or showers or any combination thereof and includes a toilet room.

AA. **SECTION 504 of the REHABILITATION ACT of 1973 (24 CFR§8.22)** — Federal law prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including the U.S. Department of Housing and Urban Development (HUD) as well as in programs conducted by federal agencies including HUD. This regulation requires that new construction of multifamily projects be designed and constructed to be readily accessible to and usable by persons with disabilities. Both individual units and the common areas in the building must be accessible.

BB. **SEWAGE SYSTEM** — The City sanitary sewer system or a private sewage disposal system approved by the City.

CC. **SPECIFICATIONS** — Sometimes referred to as "written rehabilitation standards" or "specs," that identify the minimum acceptable grades and types of materials to be used and to provide the basis for how materials and equipment shall be installed.

DD. **STORY** — The portion of a building that is situated between the top of any floor and the top of the floor next above it; or that is situated between the top of the floor and the ceiling above the floor, if there is no floor above it

EE. **VEHICLE** — Includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power.

FF. **WORKMANSHIP** — refers to the quality of the work performed by a craftsman.

GG. **YARD** — the land within the boundary lines of the property and not occupied by the principal building;

City of Houston Housing and Community Development Department
Minimum Property Standard for
New Construction and Reconstruction of
Multifamily Rental Housing

OVERVIEW & APPLICABILITY

The standards contained in this document establish the minimum property standards for New Construction and Reconstruction under the City of Houston's (COH) Multifamily Rental Housing Program.

PURPOSE

This document serves as the minimum standard for City of Houston multifamily rental housing. The minimum standard ensures the property must be free of those foreseeable hazards and adverse conditions that may affect the life, health, and safety of the occupants, and those conditions which may impair the customary use of the property. Fire safety and the structural soundness of the dwelling must be insured as well. In addition to these standards all units must comply with the more restrictive of the following:

- COH Building Code and Code of Ordinances
- The International Building Code (IBC) 2006 adopted by the City of Houston or the latest adopted edition of the IBC and any applicable code required by the pertaining Municipality.
- The International Residential Code (IRC) 2000 adopted by the City of Houston or the latest adopted edition of the IRC and any applicable code required by the pertaining Municipality.
- The International Energy Conservation Code (IECC) 2006 adopted by the City of Houston or the latest adopted edition of the Model Energy Code (MEC) and any applicable code required.
- HUD 24 C.F.R Part 200.925a-c/296 Rules for Multifamily and Care-Type Housing
- HUD C.F.R Part 8 Section 504 of the Rehabilitation Act of 1973, ADA, UFAS, FHA, and TAS where applicable.
- The requirements from other governing entities such as Homeowners Associations, and Local and Federal regulations pertaining to zoning, traffic, drainage, flood plains and fire prevention (NFPA)

MINIMUM STANDARDS FOR PROPERTY EXTERIOR

GRADING & DRAINAGE OF PROPERTY

1. Entire property shall be graded and maintained so no stagnant water will accumulate or stand on the premises, within or around any building or structure located on the premises.
2. Ground areas around buildings shall be sloped away from walls to eliminate low areas where standing water may collect.
3. All rainwater shall be drained and conveyed from every roof so as not to cause dampness/ damage to walls, ceilings, or floors of any habitable rooms, bathroom, toilet room, laundry room, or any other type of room therein.
4. Nowhere on the property shall there be standing water that causes a public health hazard.

NON-DWELLING STRUCTURES

Every foundation, wall, roof, window, door, hatchway, and every other entryway of every non-dwelling structure shall be constructed in a way to prevent the structure from becoming a harborage for rodents, snakes, vermin, and insects, and shall be kept in a state of maintenance and repair.

STEPS, SIDEWALKS, DRIVEWAYS, PARKING LOTS & PAVING

1. All walkways, sidewalks and parking lots are to be designed to comply with all requirements of section 504 of the Rehabilitation Act of 1973 (24 CFR§8.22 & 23) and the Fair Housing Act (24 CFR§100.205).
2. A walkway shall be provided from the principal entrance of every building to a public street or parking lot area.
3. Parking lots are to be graded and drained to prevent ponding of water and to direct the flow of water away from the walls of all buildings.
4. Parking lots are to be provided with suitable markings to indicate parking spaces, fire lanes and the markings shall be maintained so as to be clearly visible.
5. Where parking spaces are adjacent to a building, property line, sidewalks or walking paths, parking stops or a 6" vertical curb shall be provided shall be properly anchored and secured, and properly aligned and positioned to each parking space.
6. Parking lots shall contain adequate lighting.

MISCELLANEOUS

1. Swimming pools, decorative fountains or retention ponds must be enclosed by a fence suitable to prevent unwanted activities or unsupervised children access to those areas. Entrance locations must have acceptable locking hardware.

2. The entire property must be enclosed by a minimum 6' fence constructed of masonry, metal, chain link, wood, or wood composite. Fence structure must be secure enough to withstand wind and rain.

FOUNDATIONS, EXTERIOR WALLS, ROOFS, SOFFITS & FASCIA

1. Every building shall have a foundation acceptable for construction under the provisions of the local building codes, and shall be sound, reasonably plumb, as designed by registered structural engineer.
2. Every foundation, exterior wall, roof, soffit, fascia and all component parts shall be weather tight, watertight, rodent proof, and insect-proof and shall be kept in a state of maintenance and repair.

EXTERIOR WALL

1. All exterior wood surfaces of all non-dwelling structures shall be properly protected from the elements and from decay and rot by lead-free paint or other approved protective coatings.
2. All exterior walls must be of standard construction with a minimum 2x4's at 16 inches on center when appropriate. Insulation sheathing shall be installed on the exterior, covered with an approved exterior siding material.
3. All exterior surface material shall be protected from weather and the elements by lead-free paint or other protective coatings i.e., stain, in accordance with industry recognized standards. The exception to painting shall be all types of exterior materials acceptable to weathering without deterioration, i.e., siding.

WINDOWS & EXTERIOR DOORS

1. All windows and doors must be Energy Star rated.
2. Every habitable room shall have at least one (1) open air space. The minimum total window area, measured between stops, for every habitable room shall be as follows:
    a. 1/12 of the floor area if two or more separate windows exist, or;
    b. 1/10 of the floor area if only one window exists;
    c. A minimum of 12 square feet of window area is required in habitable rooms other than kitchens;
3. Every window sash shall be fully equipped with glass windowpanes, which are without cracks or holes, and all panes shall be secured with an adequate amount of putty. Said putty shall not be cracked, broken or missing.
4. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction, so as to exclude rain, as completely as possible and to the maximum extent feasible substantially exclude wind from entering the dwelling or structure, i.e., it must have adequate weather-stripping. Every window sash shall be in good condition and shall fit tightly within its frame.
5. Every window, other than a "fixed window", shall be capable of being easily opened and shall be held in position by window hardware in accordance with manufacturer's design.

APPENDIX 14

6. Every front, rear and side door shall be not less than 3'0" in width and not less than 6' 6" in height, except where larger doors and doorways are required.
7. All exterior doors to the outside or to a common public hall shall be solid core and be equipped with security locks.
8. All windows shall have a security device/lock.
9. Every exterior and interior door, door hinge, and door latch and/or lock shall be installed in good working condition.

ROOF COVERING

All roofs must have a minimum 4" to 1'-0" roof pitch. Every roof of a building, and all its components, shall be weather-tight, free from leaks, prevent ponding of water, be free from unsecured or unsafe objects and materials, and have a 25 year minimum life on the materials.

VENTILATION

1. Every window opening to outdoor space, intended to provide for required ventilation, shall be supplied with screens covering the required ventilation area.
2. The material used for all such screens shall be not less than 16 mesh per inch and shall be properly installed to prevent the entrance of flies, mosquitoes or other insects. Half screens on windows may be allowed, provided, they are properly installed and prevent the entrance of flies, mosquitoes or other insects.
3. A kitchen or bathroom is acceptable without a window area, provided, there is a mechanical means of ventilation.

STAIRWAYS, BALCONY'S & HALLWAYS

1. Every interior and exterior stairway, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon.
2. Handrails are not required for interior stairs having not more than 2 risers and serving a single dwelling unit and exterior stairs having not more than 3 risers and serving a single dwelling unit.
3. Handrails are required for all exterior stairs and balconies.
4. All balconies and platforms, which are 30" or more above grade, shall have a protective railing not less than 36" in height above the balcony or platform level.
5. All multiple dwellings shall have a second exit stairway or approved fire escape available to all occupants from the second floor and above of all such structures.

ELECTRICAL & EXTERIOR LIGHTING

1. Public halls, buildings and stairways shall be lighted at all times with an artificial lighting system. The said system shall provide at least 2 foot candles of illumination on all parts thereof, at all times, by means of properly located electric light fixtures, provided, that such

artificial lighting may be omitted from sunrise to sunset where an adequate amount of natural light is provided. Whenever the occupancy of the building exceeds 100 persons, the artificial lighting system as required herein, shall be on an emergency circuit.

2. The required intensity of illumination shall apply to both natural and artificial lighting.

MINIMUM STANDARDS FOR PROPERTY INTERIOR

MINIMUM CEILING HEIGHT

1. All habitable rooms in a dwelling or dwelling unit shall have a minimum ceiling height of 7'-6".
2. All rooms, except kitchen and/or kitchenettes and baths, shall have a minimum width of 7'-0".
3. At least 1/2 of the floor area of every habitable room located above the 1st floor shall have a ceiling height of 7'-6", and the floor area of that part of any room where the ceiling height is less than 5' shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining maximum floor area.

DWELLING ROOMS, FLOORS & DOORS

1. Minimum Room configurations and sizes shall be as follows:
    a. The minimum standard in a dwelling unit is as follows: One functional toilet with seat, lavatory, towel rack, ring or hook, and either a shower or a bathtub. Any additional baths in a unit, at minimum, must contain one functional toilet with seat, towel rack, ring or hook and a lavatory.
    b. Single bedrooms shall be at least 100 square feet in area with the room having a minimum dimension on one side of 8'-0". Bedrooms accessed off another bedroom shall not count as a separate room.
    c. Living rooms shall be at least 80 square feet in area.
    d. All bedrooms must have access to closets for storage of clothing.
2. Every occupant of every dwelling unit shall have unrestricted access to a toilet, to a bath, and to a kitchen sink and lavatory basin located within that dwelling unit. No dwelling or dwelling unit containing (2) or more sleeping rooms shall have such room arrangement that access to a bathroom or toilet room intended for use by the occupants can be had only by going through another sleeping room or bathroom or toilet room.
3. Every bathroom, toilet room, kitchen and utility room floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
4. Floor covering in bathroom shall be vinyl type or tile and shall be free from defects. Floor finishes shall be slip resistant when wet and shall be sealed around their edges with silicone sealant. Any flooring material that permits water to seep into the subfloor is unacceptable.
5. Laminate, wood, vinyl, or other similar types of flooring is not acceptable in flats above the ground floor level (except for kitchens and bathrooms), due to potential noise disturbance to tenants below.

6. Dwelling units with 2 or more bedrooms shall have an additional storage area of at least 4 square feet per bedroom. This storage requirement does not necessarily have to be located in the bedrooms.
7. All bedrooms must have a functional door, which may be of hollow core material, which closes, and can be locked from the inside. The width must be at least 32".
8. All bathroom doors must be at least 24" wide by 6'-0" in height and have locking doorknobs from the inside of the bathroom or have other ways of locking the door (standard bathroom door knobs).

KITCHEN FACILITY (EXCEPT FOR SINGLE ROOM OCCUPANCY (SRO))

1. Every dwelling unit shall have a kitchen room or kitchenette equipped with the following:
   a. Kitchen Sink - an approved kitchen sink, properly connected to both hot and cold running water lines, properly functions under normal pressure, and maintained in working order.
   b. Stove - a stove (gas or electric), properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended. Installation of overhead fans is required over the cooking area. (Stoves may not be required in some efficiency size apartments when approved by the Director.)
   c. Refrigerator - a refrigerator, properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended.
2. Work Space & Utilities - if tenants are required to furnish their own appliances, the landlord shall furnish sufficient space and all required electrical connections, properly installed, to facilitate the use of said appliances.
3. Every dwelling unit in which meals are prepared shall have a sink that is installed in a counter having a backsplash and a drain board made of material impervious to water. The sink shall be connected to an adequate supply of potable running hot and cold water and be connected to the drainage system of the dwelling unit.
4. Sinks and faucets must meet minimum applicable standards. Sink and a backsplash shall be water and grease resistant.
5. Every dwelling unit shall have a work surface of at least 8 square feet, which shall be impervious to grease and water and a space sufficient to accommodate a cooking range or countertop cooking unit, beside or in the countertop and without placing the device in a doorway or a path of egress.
6. Cabinets, cupboards or pantry for the storage of food, dishes, and cooking utensils shall be provided.
7. Stove shall be either gas or electric and oven shall be clean and provided with shelves. Installation of overhead fans may require installation of a cabinet for attachment of the fan.
8. Each kitchen in a dwelling unit shall have an approved, connected and operating gas or electrical supply for cooking and refrigeration appliances.
9. GFCI (ground fault circuit interrupter) outlet receptacles will be required on all counter tops within 6'-0" of sink areas.

10. Minimum lighting in kitchens will consist of one lighting fixture in the kitchen cooking area and 1 lighting fixture in any adjoining eating/dining area.

11. The refrigerator/freezer shall have a minimum capacity of at least 18 cu ft (refrigerator) and 4 cu ft (freezer) (Smaller refrigerators may be allowed in some efficiency size apartments when approved by the Director.)

BATHROOM FACILITIES

1. Every dwelling unit shall contain a bathroom equipped with the following items:

   a. **A toilet** equipped with adequate running water connected to the water supply. The toilet shall be clean, secure, and free of defects, with a secure seat and the bowl shall fill at a reasonable rate. Toilet needs to be connected only to a cold water supply. No toilet or urinal shall be located within a habitable room.

   b. **A wash basin/sink** that shall be located in or adjacent to every room that contains a toilet or urinal. Fixtures shall be connected with an adequate supply of potable, hot and cold running water. The sink must have a proper drain with P-trap and be vented to the outside. A water resistant back splash shall be provided of a minimum height of 4" that is sealed around the edges with bathroom grade silicone sealant.

   c. **A bathtub/shower** may be in the same room as the toilet and lavatory or in a separate room. The bathtub shall be of a reasonable design so as not to give rise to a slipping hazard to those who use the shower. Bathtub and shower walls shall be covered to a height sufficient to protect the walls from water penetration. Bathtub shall be fitted securely and there shall be no leaks. All shower bases shall be adequately sealed and a curtain rod or door shall be provided of a sufficient standard to prevent water damage to the floor.

   d. **A toilet paper roll holder & towel bar** shall be provided within 12" of toilet or tub.

   e. **Medicine cabinet & mirror** Medicine cabinets that will limit access by children and a minimum 2'x2' mirror are required in all full baths.

   f. **Light fittings** shall be of a sealed type appropriate for bathrooms.

   g. **Ventilation** shall be provided.

2. Every toilet and every bath shall be contained in a room or within separate rooms, which affords privacy to a person within said room or rooms.

3. All bathrooms and toilet rooms shall be located within an area accessible from within the building.

4. Every communal bath shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities, without going through a dwelling unit of another occupant and without going outside of the dwelling.

5. Toilets and bathrooms shall have doors with a privacy-type lock.

PLUMBING

1. Every dwelling unit shall contain at least the minimum number and types of working plumbing fixtures, consisting of a water closet; a hand wash basin; and a bathtub or shower.
2. Every supplied facility, piece of equipment, or utility which is required under this section, shall be constructed and installed in safe, sanitary working condition, free from leaks, defects and obstructions.
3. Every dwelling and every building to which water is available under pressure through piping shall be provided with piping for hot and cold water connected to every kitchen fixture, every washbasin, bathtub, shower, sink and laundry area; and piping for cold water connected to every toilet and hose bib.
4. Water taps shall be free of defects with no leaks or drips and in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems. The type of water tap to be fitted should have a ceramic disc washer and should be quarter turn or lever operated.
5. Every dwelling shall have supplied water-heating facilities which are properly installed, in working condition, and free of leaks; properly connected to any required hot water lines; and capable of heating water to be drawn for every bath as well as general usage.
6. Hot water storage associated with water heating facilities shall be not less than the following minimum capacities:
    a. One (1) dwelling unit -30 gallons
    b. Two (2) dwelling units - 40 gallons
    c. Three (3) or more dwelling units and rooming houses - 50 gallons or more
7. Sizes and/or number of water heaters shall be based upon the number of units served. No water heaters shall be allowed in sleeping rooms, bathrooms or closets, unless closet is dedicated for the purpose of housing plumbing and mechanical equipment. Water heaters in a utility room are acceptable. All water heaters shall be properly vented and sealed and shall be equipped with a pressure relief valve and drip leg.

VENTILATION

1. Every bathroom, toilet room, and kitchen shall comply with the light and ventilation requirements for habitable rooms contained above, except that no window shall be required in adequately ventilated bathrooms, toilet rooms or kitchens equipped with a ventilation system installed in good working condition and located to ensure its proper operation.
2. All bedrooms must have an egress window in addition to the door. Egress windows must be no more than 44" from the floor and permit at least 5.7 square feet of egress area. Windows must be operable, have locking mechanisms, and provide for ventilation. If there are living accommodations in a basement, an egress window is required.
3. All bathrooms must have an operational window, electric vent fan, or other acceptable method of ventilation.
4. Ceiling fans installed in general living areas shall be Energy Star rated and installed to manufacturer's requirements.

ELECTRICAL & LIGHTING

1. The capacity of the system of circuits and electrical outlets within a building shall be adequate for the intended use of all rooms, and adequate electrical outlets shall be installed to prevent the need for extension cords or other extensions being used as a permanent wiring system.
2. Every habitable room within such dwelling shall contain, at a minimum, 2 separate and remote wall type electric convenience outlets.
3. Habitable rooms over 120 square feet, shall contain, at a minimum, 3 separate and remote wall type electric convenience outlets. All newly installed outlets shall be grounded type outlets.
4. Temporary wiring or extension cords shall not be used as permanent wiring.
5. All receptacles in the kitchen, bathroom and lavatory, must be GFCI type (Ground Fault Circuit Interrupter) and outlets must be provided within 6 feet from any sink or lavatory.
6. Receptacle convenience outlets installed on the exterior of the structure or on open porches, breezeways, garages, utility rooms, etc. shall be of the GFCI type. All electric lighting fixtures installed on the exterior shall be of the type approved for exterior use.
7. All heavy duty appliances, i.e., window air conditioners, freezers, refrigerators, electric stoves, washers, electric dryers, microwaves, etc., shall be supplied with their own dedicated outlet(s) on separate circuits, as applicable.
8. Outlets are required to permit coverage of the entire room by an appliance with a 6 foot cord.
9. Every habitable room shall have at least 1 ceiling or wall type electric light fixture, controlled by a wall switch, or a wall type grounded electric convenience outlet controlled by a remote switch in the interior of the room next to the entrance.
10. Every toilet room, bathroom, laundry, and hallway (where applicable) shall contain at least 1 supplied ceiling or wall type electric light fixture, controlled by a wall switch, and at least 1 wall type grounded electric convenience outlet. Wall type convenience outlets used in bathrooms and kitchens shall be the GFCI type.
11. Light switches in an open staircase must be double switched at the top and bottom of the stairs. Living quarters will be electrically switched at entrances. Weather proof exterior lighting at the front and back doors must be provided, and these lights must be switched from the interior at the entrance.

HEATING & AIR CONDITIONING FACILITIES

1. Each dwelling unit shall be supplied with its own heating & air condition system that is properly installed, in safe and good working condition, and be capable of adequately heating and cooling all habitable rooms, bathrooms, and toilet rooms contained therein to a temperature of at least 72°F measured at a distance of 36" above floor level under ordinary winter and summer conditions. Heating & air conditioning system must be adequate for healthful and comfortable living conditions.
2. Air conditioning equipment shall be installed in accordance with the manufacturer's specifications.
3. Every central heating & air condition units shall be located and installed with the following:

a. Every heat duct, steam pipe and hot water pipe shall be free of leaks and shall function such that an adequate amount of heat is delivered where intended and in such a manner so as to afford protection against involvement of egress facilities or egress routes in the event of uncontrolled fires in the structure.

b. Every fuel burning heating unit or water heater shall be effectively vented in a safe manner to a chimney or duct leading to the exterior of the building. The chimney duct and vents shall be of such a design as to assure proper draft and shall be adequately supported.

c. Every steam or hot water boiler and every water heater shall be protected against overheating by appropriate temperature and pressure controls.

d. A thermostat that controls both heating and cooling should be located near the return air grill.

4. A/C condenser units shall be a minimum 14 SEER rating. All units shall be installed in a non-obstructed area and well supported on a level surface.

5. The condenser unit's refrigerant line (larger line) must be insulated, and have secured wiring and connections. An electric disconnect switch shall be installed for maintenance and repairs.

SMOKE DETECTORS

1. All residential structures shall have U.L. approved "hard wired" smoke detectors , properly installed in all bedrooms and in area adjacent to bedrooms in accordance with manufacturer's instructions .

2. When more than one smoke alarm is required in an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

ENERGY CONSERVATION

All structures shall comply with certain energy conservation measures (U.S. Department of Energy recommendations). These measures include, but are not necessarily limited to, the following:

1. Installation of insulation or the installation of additional insulation, especially in the attic/ceiling areas: The recommended level for ceiling insulation is to a resistance factor of R-30, wherever possible.
2. An air infiltration barrier, such as Tyvek or approved equal, shall be installed on all exterior walls. The minimum R factor is R-19 or R-13 plus R-5 foam. The installation of fan-fold foam or foam sheathing may be added to increase household R-ratings.
3. The installation of weather stripping at all exterior doors and windows is required. Doors shall be Energy Star rated. Door jams will be sealed and thresholds will be caulked.
4. Provide caulking around exterior doors and windows, at the foundation/sill plate union, and at other air-infiltration areas.
5. All heat ducts and hot water or steam heat distribution piping shall be insulated or otherwise protected from heat loss where such ducts or piping runs are located in unheated spaces.

Similarly, distribution piping for general use hot water shall also be protected from heat loss where such piping is located in unheated spaces. All water distribution piping shall be protected from freezing.

City of Houston Housing and Community Development Department
Minimum Property Standard for
Rehabilitation Construction
for Multifamily Rental Housing

OVERVIEW

The standards contained in this document establish the minimum property standard for Rehabilitation Construction under the City of Houston's Multifamily Rental Housing Program.

PURPOSE

This document serves as the minimum standard for City of Houston multifamily rental housing rehabilitation projects. It is to provide guidance to achieving those **minimum standards in the areas of work which your project may address.** This document **does not mandate that all the outlined areas are undertaken as a part of your project.** This minimum standard is designed to ensure that the property is free of those foreseeable hazards and adverse conditions that may affect the life, health, and safety of the occupants, and those conditions which may impair the customary use of the property. Fire safety and the structural soundness of the dwelling must be insured as well. In addition to these standards all units must comply with the more restrictive of the following for any work undertaken:

- COH Building Code and Code of Ordinances
- The International Building Code (IBC) 2006 adopted by the City of Houston or the latest adopted edition of the IBC and any applicable code required by the pertaining Municipality.
- The International Residential Code (IRC) 2000 adopted by the City of Houston or the latest adopted edition of the IRC and any applicable code required by the pertaining Municipality.
- The International Energy Conservation Code (IECC) 2006 adopted by the City of Houston or the latest adopted edition of the Model Energy Code (MEC) and any applicable code required by the pertaining Municipality.
- The Lead Based Paint regulations as described in 24 CFR, Part 35 for units built before 1978.
- HUD 24 C.F.R Part 200.925a-c/296 Rules for Multifamily and Care-Type Housing
- HUD C.F.R Part 8 Section 504 of the Rehabilitation Act of 1973, ADA, UFAS, FHA, and TAS where applicable.
- The requirements from other governing entities such as Homeowners Associations and Local and Federal regulations pertaining to zoning, traffic, drainage, flood plains and fire prevention (NFPA)

MINIMUM STANDARDS FOR PROPERTY EXTERIOR

GRADING AND DRAINAGE OF PROPERTY

1. Entire property shall be graded and maintained so no stagnant water will accumulate or stand on the premises, within or around any building or structure located on the premises.
2. Ground areas around buildings shall be sloped away from walls to eliminate low areas where standing water may collect.
3. All rainwater shall be drained and conveyed from every roof so as not to cause dampness/ damage to walls, ceilings, or floors of any habitable rooms, bathroom, toilet room, laundry room, or any other type of room therein.
4. If present, all rainwater draining devices such as gutters and downspouts shall be kept in a state of maintenance and repair.

Nowhere on the property shall there be standing water that causes a public health hazard.

NON-DWELLING STRUCTURES

Every foundation, wall, roof, window, door, hatchway, and every other entryway of every non-dwelling structure shall be constructed in a way to prevent the structure from becoming a harborage for rodents, snakes, vermin, and insects.

STEPS, SIDEWALKS, DRIVEWAYS, PARKING LOTS & PAVING

1. All walkways, sidewalks and parking lots are to be designed and monitored in accordance with section 504 of the Rehabilitation Act of 1973 (24 CFR§8.22 & 23) and the Fair Housing Act (24 CFR§100.205).
2. A walkway shall be maintained from the principal entrance of every building to a public street or parking lot area.
3. Parking lots shall be appropriately sloped so as to prevent ponding of water and to direct the flow of water to the appropriate storm drainage infrastructure.
4. Paved parking lots shall have clearly visible and suitable markings to indicate parking spaces and fire lanes.
5. Parking stops or a 6" vertical curb shall be provided where parking spaces are adjacent to a building, property line, sidewalks or walking paths, shall be properly anchored and secured, and properly aligned and positioned to each parking space.
6. Parking lots shall contain adequate lighting.

MISCELLANEOUS

1. Swimming pools, decorative fountains or retention ponds must be enclosed by a fence suitable to prevent unwanted activities or unsupervised children access to those areas. Entrance locations must have acceptable locking hardware.

2. The entire property must be maintained and enclosed by a minimum 6' fence constructed of masonry, wood, wood composite, chain link, or metal. Fence structure must be secure enough to withstand wind and rain.

FOUNDATIONS, EXTERIOR WALLS, ROOFS, SOFFITS & FASCIA

1. Every building shall have a foundation acceptable under the provisions of the local building codes and shall be sound, reasonably plumb, and adequate to carry the loads imposed on them. At the City's sole discretion, reports from certified/licensed professionals commenting on the condition/suitability of the foundations may be required.
2. Every foundation, exterior wall, roof, soffit, fascia and all component parts shall be maintained to be weather tight, watertight, rodent proof, and insect-proof.

EXTERIOR WALL SURFACES

1. All exterior wood surfaces of all non-dwelling structures shall be properly protected from the elements and from decay and rot by lead-free paint or other approved protective coatings. If units are constructed on or before 1978, treatment of all applicable surfaces shall be in full compliance with the Lead Base Paint regulations as found at 24 CFR Part 35, including all future amendments as published by HUD.
2. A lead-based paint analysis must be conducted on structures constructed prior to 1978. If testing reveals the existence of lead-based paint surfaces, they must be removed or covered as prescribed by HUD Lead-Based Paint regulations.
3. All exterior walls framing, exposed during the course of the rehabilitation must be of standard construction with a minimum 2x4's at 16 inches on center, when appropriate. Insulation sheathing shall be installed on the exterior, covered with an approved exterior siding material.
4. All exterior surface material shall be protected from weather and the elements by lead-free paint or other protective coatings i.e., stain, in accordance with industry recognized standards. The exception to painting shall be all types of exterior materials acceptable to weathering without deterioration, i.e., siding.
5. Every exposed ceiling or exterior wall of a residential building when opened or replaced during the course of alterations or renovations shall be insulated, in order to minimize heat loss, air infiltration and moisture condensation on the interior surfaces, in accordance with the local building codes.

WINDOWS & EXTERIOR DOORS

1. All windows and doors being replaced must be Energy Star rated.
2. Every habitable room shall have at least one (1) open air space. The minimum total window area, measured between stops, for every habitable room shall be as follows:
   a. 1/12 of the floor area if two or more separate windows exist, or;
   b. 1/10 of the floor area if only one window exists;
   c. A minimum of 12 square feet of window area is required in habitable rooms other than kitchens;

3. Every window sash shall be fully equipped with glass windowpanes, which are without cracks or holes, and all panes shall be secured with an adequate amount of putty. Said putty shall not be cracked, broken or missing.
4. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction, so as to exclude rain, as completely as possible and to the maximum extent feasible substantially exclude wind from entering the dwelling or structure, i.e., it must have adequate weather-stripping. Every window sash shall be in good condition and shall fit tightly within its frame.
5. Every window, other than a "fixed window", shall be capable of being easily opened and shall be held in position by window hardware in accordance with manufacturer's design.
6. Every front, rear and side door shall be not less than 2' 4" in width and not less than 6' 6" in height, except where larger doors and doorways are required to accommodate handicapped access.
7. All exterior doors to the outside or to a common public hall shall be solid core and be equipped with adequate security locks.
8. All windows shall have a security device/lock.
9. Every exterior and interior door, door hinge, and door latch and/or lock shall be in good working condition, function as originally intended, and when closed, shall fit well within its frame.

ROOF COVERING

1. All pitched roofs must have a minimum 4" to 1'-0" roof pitch.
2. Whenever feasible, in one to three story stick and brick construction, flat roofs over dwelling units should be eliminated in favor of pitched roofs.
3. Reconstruction of the roof should occur whenever the damaged area is wider than 9 feet on the stooped side and leaking cannot be prevented by installation of rolled roofing or rubberized roofing membrane.
4. Every roof of a building, and all its components, shall be weather-tight, free from leaks, prevent ponding of water, be free from unsecured or unsafe objects and materials, and have a 25 year minimum life on the materials.

VENTILATION

1. Every window opening to outdoor space, intended to provide for required ventilation, shall be supplied with screens covering the required ventilation area.
2. The material used for all such screens shall be not less than 16 mesh per inch and shall be properly installed, to prevent the entrance of flies, mosquitoes or other insects. Half screens on windows may be allowed, provided, they are properly installed and are bug and insect tight.
3. A kitchen or bathroom is acceptable without a window area, provided, there is a mechanical means of ventilation in working order.

STAIRWAYS, BALCONY'S & HALLWAYS

1. Every interior and exterior stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon.
2. Handrails are not required for interior stairs having not more than 2 risers and serving a single dwelling unit and exterior stairs having not more than 3 risers and serving a single dwelling unit.
3. All balconies and platforms, which are 30" or more above grade, shall have a protective railing not less than 36" in height above the balcony or platform level.
4. All multiple dwellings shall have a second exit stairway or approved fire escape available to all occupants from the second floor and above of all such structures.

ELECTRICAL & EXTERIOR LIGHTING

1. Public halls, buildings and stairways shall be lighted at all times with an artificial lighting system. The said system shall provide at least 2 foot candles of illumination on all parts thereof, at all times, by means of properly located electric light fixtures, provided, that such artificial lighting may be omitted from sunrise to sunset where an adequate amount of natural light is provided. Whenever the occupancy of the building exceeds 100 persons, the artificial lighting system as required herein, shall be on an emergency circuit.
2. The required intensity of illumination shall apply to both natural and artificial lighting.
3. All electric panel boxes shall be properly labeled and accessible from either the interior or exterior of the dwelling unit. The electrical switch boxes on the exterior must be capable of being locked, but must allow emergency access. If the unit's panel box is located on the exterior of the unit, it must be locked, but access by the tenant must be provided at all times to address tripped breakers.

PLUMBING - WATER SUPPLY

All dwelling units shall be connected to a municipal water supply..

MINIMUM STANDARDS FOR PROPERTY INTERIOR

MINIMUM CEILING HEIGHT

1. Wherever possible, all habitable room in a dwelling or dwelling unit shall have a minimum ceiling height of 7'-6".
2. All rooms, except kitchen and/or kitchenettes and baths, shall have a minimum width of 7'-0" unless such provision would require major additional reconstruction.
3. At least 1/2 of the floor area of every habitable room located above the 1st floor shall have a ceiling height of 7'-6", and the floor area of that part of any room where the ceiling height is less than 5' shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining maximum floor area.

DWELLING ROOMS, FLOORS & DOORS

1. If the project includes redesigning floor plans Minimum Room configurations and sizes shall be as follows:
   a. single bedrooms shall be at least 100 square feet in area with the room having a minimum dimension on one side of 8'-0".
   b. Bedrooms accessed solely through another bedroom shall not count as a separate room.
   c. Living rooms shall be at least 80 square feet in area. Rooms of less than 50 square feet cannot be used as living rooms or bedrooms.
   d. All bedrooms must have access to closets for storage of clothing. On existing housing, closets in adjoining hall areas are acceptable.
2. Every occupant of every dwelling unit shall have unrestricted access to a toilet, to a bath, and to a kitchen sink and lavatory basin located within that dwelling unit. No dwelling or dwelling unit containing 2 or more sleeping rooms shall have such room arrangement that access to a bathroom or toilet room intended for use by the occupants can be had only by going through another sleeping room or bathroom or toilet room.
3. Every bathroom, toilet room, kitchen and utility room floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
4. Carpeting in bathrooms is generally not considered an appropriate floor material.
5. Laminate, wood, vinyl, or other similar types of flooring is not acceptable in flats above the ground floor level (except for kitchens and bathrooms), due to potential noise disturbance to tenants below.
6. Floor covering in bathroom shall be vinyl type or tile and shall be free from defects. Floor finishes shall be slip resistant when wet and shall be sealed around their edges with silicone sealant. Any flooring material that permits water to seep into the subfloor is unacceptable.
7. When possible, dwelling units with 2 or more bedrooms shall have a storage floor area of at least 4 square feet per bedroom. This storage requirement does not necessarily have to be located in the bedrooms.

8. All bedrooms must have a functional door, which may be of hollow core material, which closes, and can be locked from the inside. The width must be at least 32".

9. All bathroom doors must be at least 24" wide by 6'-0" in height and have locking doorknobs from the inside of the bathroom or have other ways of locking the door (standard bathroom door knobs).

KITCHEN FACILITY (EXCEPT FOR SINGLE ROOM OCCUPANCY (SRO))

1. Every dwelling unit, shall have a kitchen room or kitchenette equipped with the following:
   a. **Kitchen Sink** - an approved kitchen sink, properly connected to both hot and cold running water lines, under pressure, and maintained in working order.
   b. **Stove** - a stove (gas or electric), properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended. Installation of overhead fans is required over the cooking area. (Stoves may not be required in some efficiency size apartments when approved by the Director.) .
   c. **Refrigerator** - a refrigerator, properly connected to the source of power, maintained in working order, and capable of supplying the service for which it is intended.
   d. **Work Space & Utilities** - if tenants are required to furnish their own appliances, the landlord shall furnish sufficient space and all required electrical connections, properly installed, to facilitate the use of said appliances.
2. Every room in which meals are prepared in a dwelling unit shall have a sink that is installed in a counter having a backsplash and a drain board made of material impervious to water. The sink shall be connected to an adequate supply of potable running hot and cold water and be connected to the drainage system of the dwelling unit.
3. Sinks and faucets must meet minimum applicable standards. Sink and backsplash shall be water and grease resistant. P-traps and other drain components under the sink shall be metal and or PVC material.
4. Every dwelling unit in which meals are prepared shall have a work surface of at least 8 square feet, which shall be impervious to grease and water.
5. All counter tops showing evidence of wear, water damage, uplifting of surface material, etc. must be replaced. Replacement counter tops may include prefabricated laminated counter tops when walls are sufficiently square. When walls are not square and constructed of plaster materials, counter tops must be built in place, using acceptable materials and designed appropriately for functional use. Granite may be used when cost is not substantially greater than other commonly used materials.
6. Every reasonable effort shall be made to provide cabinets, cupboards or pantry for the storage of food, dishes, and cooking utensils.
7. When a cabinet's level of wear makes it unsanitary or nonfunctional, it shall be replaced.
8. Stove shall be either gas or electric and oven shall be clean and provided with shelves. Installation of overhead fans may require installation of a cabinet for attachment of the fan.
9. Each kitchen in a dwelling unit shall have an approved, connected and operating gas or electrical supply for cooking and refrigeration appliances.

10. GFCI (ground fault circuit interrupter) outlet receptacles will be required on all counter tops within 6'-0" of sink areas.

11. Minimum lighting in kitchens will consist of 1 lighting fixture in the kitchen cooking area and one lighting fixture in an adjoining eating/dining area.

12. Every reasonable effort shall be made to provide space in the kitchen sufficient to accommodate a refrigerator/freezer having a minimum capacity of at least 18 cubic feet (refrigerator) and 4 cubic feet (freezer) without impeding accessibility to other areas of the kitchen.

BATHROOM FACILITIES

1. Every dwelling unit shall contain a bathroom equipped with the following items:
   a. **A toilet** equipped with adequate running water connected to the water supply. The toilet shall be clean, secure, free of defects, with a secure seat, and the bowl shall fill at a reasonable rate. Toilet needs to be connected only to a cold water supply. No toilet or urinal shall be located within a habitable room.
   b. **A wash basin/sink** that shall be located in or adjacent to every room that contains a toilet or urinal. Fixtures shall be connected with an adequate supply of potable, hot and cold running water and must have hot and cold water knobs and must be in good functioning condition. The sink must have a proper drain with P-trap and be vented to the outside. A water resistant back splash shall be provided of a minimum height of 4" that is sealed around the edges with bathroom grade silicone sealant.
   c. **A bathtub/shower** may be in the same room as the toilet and lavatory or in a separate room. The bathtub shall be of a reasonable design so as not to give rise to a slipping hazard to those who use the shower. Bathtub and shower walls shall be covered to a height sufficient to protect the walls from water penetration. Bathtub shall be fitted securely and there shall be no leaks. All shower bases shall be adequately sealed and a curtain rod or door shall be provided of a sufficient standard to prevent water damage to the floor.
   d. **A toilet roll holder & towel bar** shall be provided within 12" of toilet or tub.
   e. **Medicine cabinet & mirror** Medicine cabinets that will limit access by children and a minimum 2'x2' mirror are required in all full baths.
   f. **Light fittings** shall be of a sealed type appropriate for bathrooms.
   g. **Ventilation** shall be provided.

2. Every toilet and every bath shall be contained in a room or within separate rooms, which affords privacy to a person within said room or rooms.

3. All bathrooms and toilet rooms shall be located within an area accessible from within the building.

4. Every communal bath shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities, without going through a dwelling unit of another occupant and without going outside of the dwelling.

5. Toilets and bathrooms shall have doors with a privacy-type lock and such doors, locks and hardware shall be operable.

6. When there is decaying ceramic or plastic tile in bath or shower areas, the deteriorated area must be removed. Water proof sheetrock must be installed, and old or new tile reinstalled, grouted, and caulked. Backsplashes above sinks may also be required depending on the condition and layout of sinks and other plumbing.

PLUMBING

1. Every dwelling unit shall contain a minimum number and type of working plumbing fixtures, consisting of a water closet, a hand wash basin, and a bathtub or shower.
2. Every supplied facility, piece of equipment, or utility which is required under this section, shall be constructed or installed in safe, sanitary working condition, free from leaks, defects and obstructions.
3. Potable water supply piping, water discharge outlets, backflow prevention devices or similar equipment shall not be so located as to make possible their submergence in any contaminated or polluted liquid or substance.
4. Every dwelling and every building shall be provided with piping for hot and cold water connected to every kitchen fixture, every washbasin, bathtub, shower, sink and laundry area; and piping for cold water connected to every toilet and hose bib.
5. Water taps shall be free of defects with no leaks or drips and in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems. Traditional screw machine head taps should be avoided. The type of water tap to be fitted should have a ceramic disc washer and should be quarter turn or lever operated.
6. Every dwelling shall be connected to adequate water-heating facilities which are properly connected to any required hot water lines; and capable of heating water to be drawn for every bath, as well as general usage.
7. Hot water storage associated with water heating facilities shall be not less than the following minimum capacities:
    a. One (1) dwelling unit - 30 gallons
    b. Two (2) dwelling units - 40 gallons
    c. Three (3) or more dwelling units and rooming houses - 50 gallons or more
    d. or the property must contain appropriately sized boilers.
8. No water heaters shall be allowed in sleeping rooms, bathrooms or closets, unless closet is dedicated for the purpose of housing plumbing and mechanical equipment. Water heaters in a utility room are acceptable. All water heaters shall be properly vented and sealed and shall be equipped with a pressure relief valve and drip leg.

VENTILATION

1. Every bathroom, toilet room, and kitchen shall comply with the light and ventilation requirements for habitable rooms contained above, except that no window shall be required in adequately ventilated bathrooms, toilet rooms or kitchens equipped with a ventilation system installed and located to ensure its proper operation.
2. Every habitable room shall have at least 1 window or skylight which can easily be opened, or be equipped with such other acceptable device to adequately ventilate the room.

3. All bedrooms must have an egress window in addition to the door. Egress windows must be no more than 44" from the floor and permit at least 5.7 square feet of egress area. Windows must be operable, have locking mechanisms, and provide for ventilation. If there are living accommodations in a basement, an egress window is required.
4. All bathrooms must have an operational window, a functional electric vent fan, or other acceptable method of ventilation.
5. Ceiling fans installed in general living areas shall be Energy Star rated and installed to manufacturer's requirements.

ELECTRICAL & LIGHTING

1. The capacity of the system of circuits and electrical outlets within a building shall be adequate for the intended use of all rooms, and adequate electrical outlets shall be installed to prevent the need for extension cords or other extensions being used as a permanent wiring system.
2. Every habitable room within such dwelling shall contain at a minimum, 2 separate and remote wall type electric convenience outlets.
3. Habitable rooms over 120 square feet, shall contain, at a minimum, 3 separate and remote wall type electric convenience outlets. All newly installed outlets shall be grounded type outlets.
4. Temporary wiring or extension cords shall not be used as permanent wiring.
5. All receptacles in the kitchen, bathroom and lavatory, must be GFCI type (Ground Fault Circuit Interrupter) outlets and must be provided within 6'-0" from any sink or lavatory.
6. Receptacle convenience outlets installed on the exterior of the structure or on open porches, breezeways, garages, utility rooms, etc. shall be of the GFCI type. All electric lighting fixtures installed on the exterior shall be of the type approved for exterior use.
7. All heavy duty appliances, i.e., window air conditioners, freezers, refrigerators, electric stoves, washers, electric dryers, microwaves, etc., shall be supplied with their own dedicated outlet(s) on separate circuits, as applicable.
8. Outlets are required to permit coverage of the entire room by an appliance with a 6 foot cord. Use of extension cords is discouraged and additional outlets should be provided whenever possible to avoid their use.
9. Every habitable room shall have at least 1 ceiling or wall type electric light fixture, controlled by a wall switch, or a wall type grounded electric convenience outlet controlled by a remote switch preferably in the interior of the room next to the entrance.
10. Every toilet room, bathroom, laundry, furnace room, and hallway (where applicable) shall contain at least 1 supplied ceiling or wall type electric light fixture, controlled by a wall switch, and at least 1 wall type grounded electric convenience outlet. Wall type convenience outlets used in bathrooms and kitchens shall be the GFCI type.
11. Light switches in an open staircase, must be double switched at the top and bottom of the stairs. Living quarters should be electrically switched at entrances, unless impractical.

12. Exterior lighting at the front and back doors must be provided. These lights must be weather proof and switched from the interior at the entrance. All old pendant type lighting fixtures shall be removed and replaced with properly installed non-pendant type fixtures

13. All broken and/or missing switch plates and/or receptacle plates shall be replaced.

14. All outlets and fixtures shall be properly installed and connected to the source of electric power in a proper manner

15. If a unit does not have a central air-conditioning system and central air will not be installed, at a minimum a proper grounded outlet shall be installed under 1 window in each habitable room to allow the occupant(s) to install window air conditioning units.

16. Unit specific lights switched from the outside generally do not need to be moved, unless rewiring to be conducted in the house.

HEATING & AIR CONDITIONING FACILITIES

1. Each dwelling unit supplied with its own heating & air condition system, that system is to be properly installed, in safe and good working condition, and be capable of adequately heating and cooling all habitable rooms, bathrooms, and toilet rooms contained therein to a temperature of at least 72°F measured at a distance of 36" above floor level under ordinary winter and summer conditions. Heating & air conditioning system must be adequate for healthful and comfortable living conditions.

2. All existing heating systems, including but not limited to, chimneys and flues, cut-off valves and switches, limit controls, heat exchangers, burners, combustion and ventilation air, relief valves, drip legs and air, hot water, or steam delivery components (ducts, piping, etc.) that are not being replaced, shall be inspected by certified professionals to be in a safe and proper functioning condition at the time of inspection, by means of written project file documentation.

3. Any dwelling unit having as its only source of heat, space heaters or floor furnaces shall have such units removed and replaced with a proper central heating system.

4. Air conditioning equipment shall be installed in accordance with the manufacturer's specifications.

5. Every central heating & air condition unit shall be located and installed with the following:
   a. Every heat duct, steam pipe and hot water pipe shall be free of leaks and shall function such that an adequate amount of heat is delivered where intended and in such a manner so as to afford protection against involvement of egress facilities or egress routes in the event of uncontrolled fires in the structure;

   b. No fuel-burning furnace shall be located in any sleeping room or bathroom unless provided with adequate ducting for air supply from the exterior, and, the combustion chamber for such heating unit shall be sealed from the room in an airtight manner.

   c. Every fuel burning heating unit or water heater shall be effectively vented in a safe manner to a chimney or duct leading to the exterior of the building. The chimney duct and vents shall be of such a design as to assure proper draft, and shall be adequately supported.

   d. Every steam or hot water boiler and every water heater shall be protected against overheating by appropriate temperature and pressure limit controls.

e. A thermostat that controls both heating and cooling should be located near the return air grill.

6. A/C condenser units that will be replaced shall meet the minimum 14 SEER rating. All units shall be installed in a non-obstructed area, level and be well supported on a level surface.

7. The condenser unit's refrigerant line (larger line) must be insulated and have secured wiring and connections. An electric disconnect switch shall be installed for maintenance and repairs.

SMOKE DETECTORS

1. All residential structures shall have U.L. approved "hard wired" smoke detectors or battery operated smoke detectors, properly installed in all bedrooms and in area adjacent to bedrooms in accordance with manufacturer's instructions.

2. When more than one smoke alarm is required in an individual dwelling unit, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit.

3. All smoke detectors shall be operable. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

ENERGY CONSERVATION

All structures shall comply with certain energy conservation measures (U.S. Department of Energy recommendations). These measures include, but are not necessarily limited to, the following:

1. Installation of insulation or the installation of additional insulation, especially in the attic/ceiling areas. The recommended level for ceiling insulation is to a resistance factor of R-30, wherever possible.
2. When siding is being replaced and/or interior wall finishes of exterior walls are being replaced on a dwelling, such exterior walls are to be provided with insulation and at the recommended resistance factor (r-value) of R-11, or that which is allowed by the stud cavity space. In addition, an air infiltration barrier, such as Tyvek or approved equal, shall be installed on all exterior walls. If new walls are being framed and insulated, the minimum R factor is R-19 or R-13 plus R-5 foam. The installation of fan-fold foam or foam sheathing may be added to increase household R-ratings.
3. The installation of weather stripping at all exterior doors, windows, ground-entry basement doors, etc. is required. Doors, when replaced, shall be Energy Star rated. Door jams will be sealed and thresholds will be caulked.
4. Provide caulking around exterior doors and windows, at the foundation/sill plate union, and at other air-infiltration areas.
5. All heat ducts and hot water or steam heat distribution piping shall be insulated or otherwise protected from heat loss where such ducts or piping runs are located in unheated spaces. Similarly, distribution piping for general use hot water shall also be protected from heat loss where such piping is located in unheated spaces. All water distribution piping shall be protected from freezing.
6. Replacement of single pane window units with thermal units or, the installation of combination storm windows if the single window units will not be replaced.

7. Any attic access passage ways in individual units should be addressed accordingly so as not to significantly reduce the efficiencies created by the other energy conservation measures being undertaken.

APPENDIX 14

ADDITIONAL REQUIREMENTS

APARTMENT UNIT & BUILDING AND PARKING TABULATION

The construction drawings shall include an Apartment Unit Tabulation that summarizes the building square footage for all types of apartment units and common areas. This would include the total number of living units per floor; unit descriptions (1 bedroom/1bath, etc.) and total square footage of each unit. Parking space tabulation shall include handicap spaces.

GENERAL NOTES

A statement shall be included in the general notes section of the drawings stating that all design and proposed renovation work for the project is in compliance with all applicable requirements for the project.

REHAB/RENOVATION DRAWINGS

All project designs and drawings for work requiring permits are to be performed by certified professionals. The type of work being performed will dictate the types of drawings that will be required. Please contact the City of Houston Planning Department or other certified professionals for details related to your individual project. One set of approved drawings shall be submitted to COH Housing & Community Development Department prior to the start of project and 1 set of "as-built" drawings at the end of the project.

Regardless of the types of drawings required, the following items are to be included in the set of working drawings:

1. A layout drawing of the entire apartment property, including all apartment buildings/units, common areas, laundry facilities, boiler rooms, access entryways, parking areas, wheel chair ramps, parking spaces, etc.;
1. The location(s) and nature of rehab work that will be performed;
3. Apartment Unit Tabulation that summarizes the building square footage for all types of apartment units and common areas. This would include the total number of living units per floor; unit descriptions (1 bedroom/1bath, etc.) and total square footage of each unit. See attachment 1 for a sample template.
4. Parking Space Tabulation showing the total number of parking spaces, including those spaces designated for handicap parking.
5. All ADA living units on the property, specifying those for individuals with mobility impairments and individuals with sensory impairments.

City of Houston Housing and Community Development Department
Minimum Property Standard for
Affordability Maintenance
for Multifamily Rental Housing

OVERVIEW

The standards contained in this document establish the minimum property habitability (MPS) standard for Affordability Maintenance for the City of Houston's Multifamily Rental Housing Program that receives assistance through federal funding from U.S. Department of Housing and Urban Development (HUD).

APPLICABILITY

This minimum standard applies to multifamily rental housing units that currently receive federal assistance or were acquired/developed/rehabilitated using federal assistance.

PURPOSE

This document serves as the minimum standard for City of Houston multifamily rental housing. As a result, the property must be free of those foreseeable hazards and adverse conditions that may affect the life, health, and safety of the occupants, fire safety, and the structural soundness of the dwelling or which may impair the customary use of the property. In addition to these standards all units must comply with the following:

- COH Building Code and Code of Ordinances
- The International Building Code (IBC) 2006 adopted by the City of Houston or the latest adopted edition of the IBC and any applicable code required by the pertaining Municipality.
- The International Residential Code (IRC) 2000 adopted by the City of Houston or the latest adopted edition of the IRC and any applicable code required by the pertaining Municipality.
- The International Energy Conservation Code (IECC) 2006 adopted by the City of Houston or the latest adopted edition of the Model Energy Code (MEC) and any applicable code required by the pertaining Municipality.
- The Lead Based Paint regulations as described in 24 CFR, Part 35 for units built before 1978.
- HUD 24 C.F.R Part 200.925a-c/296 Rules for Multifamily and Care-Type Housing

- HUD C.F.R Part 8 Section 504 of the Rehabilitation Act of 1973, ADA, UFAS, FHA, and TAS where applicable.
- The requirements from other governing entities such as Homeowners Associations and Local and Federal regulations pertaining to zoning, traffic, drainage, flood plains and fire prevention (NFPA)

MINIMUM STANDARDS FOR EXTERIOR PROPERTY

TREES, BUSHES & LAWN

1. All lawns and any other part of a property shall be kept clean and free from accumulations of junk, rubbish, brush, refuse, litter, garbage and other debris, and any conditions that are health, fire or other hazards.
2. All lawns shall be provided with suitable ground cover to prevent instability and erosion of the soil. Holes or depressions of more than 6" in diameter should be filled to correct drainage problems and remove safety hazards.
3. All lawns, shrubs, hedges, trees and plants shall be planted and maintained in a manner that does not:
    a. obstruct the safety of the public;
    b. affect the safety of vehicular or pedestrian traffic;
    c. constitute an obstruction of view for vehicular traffic;
    d. wholly or partially conceal or interfere with the use of any hydrant or water valves;
    e. overhangs or encroach upon any pavement, sidewalk or travelled portion of any street or highway.
4. Trees or parts thereof that are dead, diseased, decayed or damaged, shall be removed or maintained in a condition that is not hazardous to persons expected to be on or about the property.
5. Trees that present a safety hazard because electrical wiring running through them must be trimmed. Trees that could damage the structural integrity of an adjoining building above or below the foundation shall be removed.
6. HVAC condenser units and electrical panels shall be free of shrubs, hedges, weeds, trees and plants that interfere with its operation and access for repairs and maintenance.

GARBAGE & DEBRIS

1. Property shall be kept free of garbage, rubbish, debris or accumulations of such materials that prevent access to or exit from the property in the case of emergency or other safety or health hazard.
2. Every apartment project shall be provided with sufficient trash receptacles to contain all garbage, debris or rubbish which accumulates on the property, and such materials shall be placed for collection in proper receptacles in compliance with applicable local ordinances, and not allowed to accumulate in a manner that would present a life, health and safety issue.
3. Trash receptacles shall be containers that are water-tight, equipped with a tight-fitting cover, rodent-and pest-proof, and shall be maintained in a clean condition without holes or spillage; and closed, or emptied, rinsed and cleaned when not in use, to prevent the escape of offensive odor or debris.
4. Where commercial or on site garbage containers are visible from a public street or land, or the property abuts residential properties, the area where the receptacles are stored shall be enclosed on all sides by wall or solid fence not less than 6' high. Such wall or fence shall contain an adequate door or gate to allow for the removal of garbage or refuse. They shall be

maintained in a manner that will not attract pests, create a health or other hazard, or obstruct an emergency route, recreation facility, parking area, driveway or walkway.

5. Every unenclosed porch, balcony, and every exterior or interior hallway, stairway and common area shall be kept free of garbage, debris, furniture or appliances, except furniture which is outdoor grade or made weather and water resistant may be placed for use on balconies or porches.
6. Bulk trash, including refrigerators, stoves, washers, dryers and other appliances; unlicensed automobiles and other vehicles; and improperly stored construction materials or firewood should be removed or appropriately stacked as prescribed by City of Houston ordinances.

GRADING & DRAINAGE OF PROPERTY

1. Property shall be graded and maintained so no stagnant water will accumulate or stand on the premises, or within or around any building or structure located on the premises or create unstable soil conditions or erosion.
2. Ground areas around buildings shall be sloped away from walls to eliminate low areas where standing water may collect.
3. All catch basins, storm drains, ditches and swales shall be maintained free from defects and obstructions.
4. Condensation from air conditioners shall not be permitted to discharge onto the exterior wall of a building, pedestrian walkways, sidewalk or street.

STORM GUTTERS & SPLASH BLOCKS

1. Gutters and downspouts shall be maintained watertight and free from leaks, in good working order, and free from any obstructions and hazards, and in a stable condition and shall be securely fastened to the structure.
2. Any above-ground discharge from a downpipe or pipe shall be directed to discharge and be contained on the property in a manner that is not likely to cause damage to any adjoining property or create a hazardous condition on any stairway, walkway, street or boulevard.
3. Gutters and downspouts shall be protected by a suitable finishing material. Deteriorated gutters that impede drainage or cause a safety hazard shall be reinstalled.

PEST CONTROL

The entire property shall at all times be kept free of rodents, vermin, insects and other pests and from conditions which may encourage infestation by pests.

FENCE MAINTENANCE

1. All fences and other enclosures around or on a property shall be maintained in a structurally sound condition and plumb, unless specifically designed to be other than vertical, with a uniform construction, in good repair and free from hazards.

2. Fences, barriers, retaining walls shall be kept free of posters and graffiti and shall be maintained in compliance with all City of Houston ordinances Any part of a fence or enclosure that creates an illegal entry and access ways has to be repaired immediately

VACANT BUILDINGS

1. The owner shall protect vacant or unoccupied buildings against the risk of fire, accident or intentional damage to the property, or such damage as may be caused to other properties, arising from the entry of unauthorized persons to the building, by effectively preventing entrance by unauthorized persons.
2. The owner shall protect buildings damaged by accident, storm, neglect or other causes or intentional damage, against further risk of further damage, accident or other danger, and shall effectively prevent entrance thereto by all unauthorized persons, by closing and securing opening(s) to the building(s) with boarding which completely covers the opening.
3. Any structure that is in a state of disrepair or collapse must be repaired or demolished, and any collection of building materials must be removed from the property. Such demolition does not reduce the number of units restricted under Loan Agreements.

NON-DWELLING STRUCTURES

1. Every accessory building shall be maintained with suitable and uniform materials, kept in good repair, free from hazards, and protected by paint, preservatives or other weather-resistant material.
2. All laundry rooms, recreation rooms and any other ancillary rooms, and the facilities, amenities and associated equipment for those rooms, shall be kept clean and maintained in a safe condition and in good repair.
3. All laundry rooms shall be provided with hot and cold running water and properly connected to the drainage system.
4. All laundry rooms shall have a trapped floor drain connected to the drainage system and capable of adequately draining the floor.

STEPS, SIDEWALKS, DRIVEWAYS, PARKING LOTS & PAVING

1. The surfaces of steps, sidewalks & driveways and similar areas of the yard shall be maintained in good repair so as to afford safe passage under normal use.
2. All sidewalks, service walks driveways & patios shall be kept in a state of maintenance and repair, free from obstructions, defects, uneven joints, tripping hazards, etc.
3. All areas used for vehicular traffic or the parking or storage of a vehicle shall be paved with asphalt or concrete or other environmentally safe and dust-free equivalent surface and shall be kept free from dirt, surface dust and refuse; maintained in good repair and free from cracks, holes and ruts.
4. Parking lots are to be properly maintained in a way to prevent ponding of water and to direct the flow of water away from the walls of all buildings.

5 Parking lots are to be provided with suitable markings to indicate parking spaces, and the markings shall be maintained so as to be clearly visible. Signs, decals, pavement markings should be clear, visible and distinctive.

6 Parking stops shall be installed where parking spaces are adjacent to a property line to protect fences and neighboring properties from physical damage and shall be properly anchored and secured and properly aligned and positioned to each parking space.

7. Handicap parking areas shall be maintained so that individuals with disabilities can approach, enter, and exit the areas easily.

MISCCELANEOUS

1. The water in swimming pools shall be kept clean and in a sanitary condition free from obnoxious odors and conditions likely to create a breeding environment for insects. Surrounding surface areas for walking and relaxing shall be kept clean of dirt, mold, mildew, etc.
2. Property and building signs and faces shall be maintained without any visible deterioration of the sign or its structure so that the information conveyed by the sign by color, form, graphic, illumination, symbol or writing is clearly legible.
3. Property and building signs and any fastening/supporting structures that are damaged, broken or excessively weathered or faded, or that have a worn, peeled or cracked finish, shall be removed or refinished and put in a good state of repair so that the signs are free from defects or faded lettering.
4. Every dwelling unit shall have a separate and secure mail box or mail receptacle that is maintained in good condition at all times. Identification information on the mail box should be clearly visible.
5. All antennas, satellite dishes, lightning rods and other similar structures and their supporting members shall be maintained in a safe condition and in good repair.
6. Elevators shall be maintained in a clean condition and certified to be in good working order.
7. All elevator parts and appendages, including lighting fixtures, lamps, elevator buttons, floor indicators and ventilation fans, shall be kept in good repair and operational.
8. Coolant lines of HVAC condenser units shall be insulated to insure optimum performance. Insulation shall not be torn or worn out and shall be tightly secured to the gas line.

BUILDING STRUCTURE

1. Every building structure on the property shall be maintained in structurally sound and safe condition.
2. Every part of a building or structure shall be maintained in good repair and in a structurally sound condition so as:
   a. To be capable of safely sustaining its own weight and any load to which, normally, it might be subjected;
   b. To be capable of safely accommodating all nominal structural movements without damage, decay or deterioration; and
   c. To prevent the entry of moisture that would contribute to damage, decay or deterioration

FOUNDATION

1. The foundation walls and floors shall be maintained in good repair and structurally sound.
2. Foundation walls and crawl spaces and other supporting members of a building or structure shall be stable and not sinking and maintained in good repair and structurally sound.
3. Foundation cracks should be identified, particularly at window areas. All cracks must be filled with epoxy, cement, and rubbed with appropriate cement materials. All cracks exceeding ¼" wide must be investigated by a certified professional to determine the extent of repair work.
4. Areas of the foundation that are spalling (crumbling gravel or rock), have decaying concrete, have collapsed, or are in any other state of disrepair must be addressed to prevent further deterioration or damage to the buidlings.
5. Collapsed sections of foundations must be reconstructed as per the written recommendation of a certified professional.
6. Exposed foundation rebar should be cleaned and prepared and surface area patched thoroughly to avoid water penetration.

EXTERIOR WALL SURFACES

1. All exterior surfaces of buildings, structures, fences and retaining walls, including mobile structures and buildings shall be maintained and kept weather resistant so as to prevent their deterioration and entry of vermin and birds. Surfaces shall be free of dirt, mold, mildew, algae and water stains.
2. Exterior walls shall contain no holes or cavities, separation of siding materials, collapse of siding or deterioration of exterior siding materials or openings at the rafters and at the rim joist.
3. All exterior surfaces of buildings, structures, fences and retaining walls, including mobile structures and buildings, shall be repaired by the painting, restoring or repairing of the walls, coping or flashing or by the waterproofing of the joints and of the walls itself.
4. Markings, stains, graffiti, painted slogans, smoke damage or other markings or defacement appearing on any exterior surface shall be removed. If necessary, to maintain the exterior surface, the surface of these areas shall be restored and, resurfaced to the exterior finish of the building or structure.
5. All canopies, marquees, signs, awnings, screens, grilles, stairways, pipes, ducts, standpipes, air conditioners and all similar equipment, attachments and their supporting members shall be maintained in good repair, properly anchored and protected from the elements, so as to prevent decay and rust, by paint or other protective coating.

WINDOWS & EXTERIOR DOORS

1. Windows, skylights, exterior doors and frames and attic access doors shall be maintained in good repair and shall be of such construction so as to minimize drafts and heat losses through the infiltration of outside cold air.

2. All exterior openings for doors and windows shall be fitted with doors or windows that are maintained in a weather-tight condition to prevent drafts or leakage and protected by suitable materials to prevent the entry of rodents, vermin and insects.
3. Rotted or damaged doors, door frames, window frames, sashes and casings, weather-stripping, caulking, broken glass and missing or defective door and window hardware shall be repaired or replaced.
4. All exterior doors and the entrance door to a dwelling unit shall have hardware so as to be capable of being locked from the outside, and locked or otherwise secured from the interior of the space.
5. All windows in a dwelling unit that are capable of being opened shall be fitted and equipped with screens that are maintained in good repair and free from defects and missing components.
6. All exterior doors and windows capable of being opened shall be free from defective hardware and be capable of being locked or otherwise secured from inside the building.
7. Glazed doors, windows and other transparent surfaces shall be kept reasonably clean in order to permit unimpeded visibility and unrestricted passage.
8. Doors, passageways and exits shall be maintained free from hazardous conditions, obstructions and impediments.

STAIRWAYS, BALCONY'S & HALLWAYS

1. Interior and exterior stairs, landings, balconies, porches and any other means of access shall be maintained so as to be free of holes, cracks and other defects which may constitute possible accident hazards. Treads or risers that show excessive wear or are broken, warped or loose and all supporting structural members that are rotted, rusted or deteriorated shall be repaired or replaced. Treads that have become loose need to be securely anchored to stairwell.
2.
3. Handrails shall be installed and maintained in good repair on all exterior stairs which have more than 3 risers and on all interior stairs within dwelling units which have more than 2 risers.
4. Handrails on porches, balconies or raised floor surfaces shall be securely anchored to the floor and/or to the nearest exterior wall so as to not allow any horizontal movement of the handrail.
5. Wood balconies and walkways need to be maintained in good repair and in a structurally sound condition. Structural components that have deteriorated, rotted or are in disrepair shall be replaced to maintain the structural integrity.

ROOF COVERING

1. All structural components of a roof shall provide adequate support for all designed loads, and form a suitable base for the roof covering. It the roof is subjected to a load for which it may not be adequate, the roof shall be cleared of the load to prevent collapse or structural damage.

2. A building roof, including the fascia board, soffit, cornice and flashing around the perimeter of a roof, should be inspected for deterioration and be maintained in a weather-tight condition and able to prevent the leakage of water into the building.
3. On structures over 50 years of age, the truss and support system of roofs must be inspected to ensure adequate construction. When deficiencies are identified, appropriate supports and truss systems must be reconstructed.

PLUMBING

1. The plumbing system in every building shall be maintained in good working order and free from leaks and defects.
2. All water pipes and appurtenances thereto shall be protected from freezing.
3. All clean-out drains shall be enclosed with insert covers that contain no holes.
4. Any sanitary sewage discharged from buildings on the property constitutes a life, health and safety danger to the residents and needs to immediately be repaired.

ELECTRICAL & EXTERIOR LIGHTING

1. The capacity of the electrical connection to a building and the system of circuits and electrical outlets distributing the electrical supply within the building shall be maintained at all times and free from unsafe conditions.
2. Electrical panel boxes must have cover plates and covers for all unused breakers.
3. Every stairway, exterior exit and entrance doorway, bathroom, toilet room, kitchen, hallways, laundry, furnace room and non-habitable work room in a suite, dwelling unit or building shall have a permanently installed lighting fixture that shall be maintained in good working order to provide safe passage.
4. Exterior flood lighting shall be maintained in a good state of repair without any damage to light fixture and its components. Wires shall be properly enclosed to avoid contact with water.
5. Outdoor receptacles must be maintained to be impervious to water intrusion and in a condition that permits easy access and not interfere with lawn maintenance.
6. All exterior electrical wires shall be enclosed in conduit. Conduit that is cracked, broken or is deteriorated shall be replaced.

MINIMUM STANDARDS FOR INTERIOR PROPERTY

WALLS, FLOORS, CEILINGS, DOORS & WINDOWS

1. Floors and floor coverings shall be maintained free from any trip or other hazardous condition and shall be kept in a clean and sanitary condition and free from holes, stains, rubbish and debris.
2. Any repair, replacement or painting required on walls & ceilings shall be such that the material used shall have a finish and facing similar to that of the original covering.
3. Floors of rooms in which plumbing fixtures are installed shall be maintained to be reasonably impervious to water and in a condition that permits easy cleaning.
4. Every wall and ceiling shall be maintained clean and free of holes, cracks and damaged and deteriorated surface material, and each repair shall be finished to reasonably match the existing walls or ceilings.
5. Previously finished walls and other surfaces in public areas of property shall be maintained in good repair and shall be renewed or refinished, when necessary, to maintain a similar appearance.
6. In bathrooms, water proof green rock, blue rock or other similar drywall material must be utilized. Interior walls with decayed sheetrock must be replaced by installing new sheetrock, taping cracks, texturing and repainting.
7. Interior doors, their frames, glass panels and hardware shall be maintained in good repair, and all doors shall be of a good fit in their frames.
8. All damaged or deteriorated door trim and baseboard must be removed and replaced.
9. All doors and hatches to the roof that provide access for the purpose of maintenance shall be kept free of obstructions and locked at all times.
10. All cracked or deteriorating ceilings require an inspection to determine the cause that generated the problem. Every effort should be made to correct the problem before the ceiling is repaired. Cracks must be filled and retextured, and the ceiling completely repainted when treated.
11. When there is decaying ceramic or plastic tile in bath or shower areas, the deteriorated area must be replaced with water proof sheetrock and new tile reinstalled, grouted, and caulked.

KITCHEN FACILITIES

1. All counter tops showing evidence of wear and tear, water damage, uplifting of surface material, etc. must be replaced. Replacement counter tops may include prefabricated laminated counter tops when walls are sufficiently square.
2. Sinks and worktops shall be sealed around edges with silicone sealant to be impervious to water and in a condition that permits easy cleaning.
3. All kitchen plumbing must be inspected to ensure that faucets and drain pipes work properly All waste pipes and traps shall be free of defects with no leaks or drips.

4. Water taps shall be in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems.
5. Any holes around waste pipes and traps shall be sealed so as to prevent the ingress of vermin and pests.
6. Waste disposal unit shall be maintained in operating condition. Electrical connection wires and drain lines should be properly sealed.
7. The refrigerator/freezer or refrigerator and freezer shall be clean and in good working order.
8. All stove gas rings or burners shall be clean and in operating condition. The oven shall be clean and properly working.
9. Kitchen cabinets must have properly functioning doors and/or drawers. Cabinet doors must be in good condition and properly open and close.

BATHROOM FACILITIES

1. The toilet shall be clean, secure, and free of defects, with a secure seat and the tank shall fill at a reasonable rate. All bathroom flooring must be inspected at the base of the toilets to ensure that leaking is not occurring. When leaking has occurred and sub floor has rotted, the sub floor must be removed and replaced.
2. Bathtub or shower and washbasin shall be in good condition and should show no signs of surface build-up, cracks or chips. They shall be sealed around the edges to prevent water intrusion.
3. Waste pipes and taps shall be free of defects with no leaks or drips.
4. Water taps shall be in good condition (i.e. no dripping) and easy to operate by children or people with finger mobility problems.

BEDROOM & LIVING ROOM REQUIREMENTS

1. All bedrooms must have a functional door that closes, which, preferably can be locked from the inside.
2. All switchable light fixtures and electrical outlets in the bedrooms shall be operating condition.

ELECTRICAL

1. The capacity of the system of circuits and electrical outlets within a building shall be adequate for the intended use of all rooms, and adequate electrical outlets shall be installed to prevent the need for extension cords or other extensions being used as a permanent wiring system.
2. All electrical fixtures, switches, receptacles and connections to them shall be maintained in a safe and complete condition and in good working order.
3. All electrical connections must be in enclosed metal or plastic electrical boxes. No hanging wires are permitted.

4. All light fixtures should be inspected to ensure that they are solidly hung and that the electrical connections have not been loosened. All electrical fixtures that evidence wear must be replaced with new fixtures.
5. All electrical outlets and switches must have tight cover plates. Any switches or outlets that are nonfunctional must be inspected by a certified professional to correct.
6. Smoke detectors must be fully operational and shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Installation of smoke alarms should be in accordance with the recommendations of the manufacturer. Unacceptable smoke detectors must be removed, properly reinstalled in an acceptable location, and all affected wall or ceiling areas repaired to match surrounding.

MISCELLANEOUS

1. The heating and cooling system and all associated mechanical equipment shall be operated and maintained in good working order, free from unsafe conditions, and in accordance with the requirements of the local building code.
2. All systems of mechanical ventilation shall be maintained in good working order.
3. Every dwelling unit shall be kept free of infestation of pests.
4. Fire extinguishers should be located in the kitchen and be fully loaded and shall be maintained in good working order.
5. Boiler rooms shall be good working condition with drain lines at the temperature and pressure relief valves properly sized and terminated in an acceptable location.

ADDITIONAL REQUIREMENTS BY THE CITY OF HOUSTON

HABITABILITY ORDINANCE 2009-1043

As per the City of Houston's Ordinance 2009-1043 for Habitability Inspections – All apartment communities with 3 or more units (Sec 10-151 of the Houston Code of Ordinances) are required to register with The City of Houston for Habitability Inspection purposes (Habitability Inspection Checklist). To obtain detailed information regarding the program, log on to www.houstonmultifamily.org. For more information, please contact the Habitability Inspections Section at 713-535-7900. See appendix II for Habitability Ordinance 2009-1043.

APARTMENT SECURITY ORDINANCE 2006-1124

As per the City of Houston's Ordinance 2006-1124 for Apartment Security – All apartment communities of ten or more units (Sec 28-282 City of Houston Code of Ordinances) are required to register the ownership of the apartment community with the Multifamily Administrative Unit of the Houston Police Department. To obtain detailed information regarding the program, log on to www.houstonmultifamily.org. For more information, please contact the Habitability Inspections Section at 713-535-7900.

CERTIFICATE OF OCCUPANCY RENEWAL

All properties are required to have a Certificate of Occupancy from the City of Houston Code Enforcement located at 3300 Main Street, Houston, TX 77002.

FIRE INSPECTION

All inspections related to City of Houston Fire Department are coordinated through the City of Houston Habitability Inspection.

Appendix I

PROJECT SUMMARY:

Apartments:

Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath	46	581 s.f.
B1	One Bedroom, 1 Bath	24	620 s.f.
C1	One Bedroom, 1 Bath	131	660 s.f.
C2	One Bedroom, 1 Bath (H.C.)	9	660 s.f.
Total One Bedroom Units		**210 Units**	**130,006 s.f.**
D1	Two Bedroom, 1 Bath	41	857 s.f.
D2	Two Bedroom, 1 Bath (H.C.)	3	857 s.f.
E1	Two Bedroom, 2 Bath	63	950 s.f.
E2	Two Bedroom, 2 Bath (H.C.)	5	950 s.f.
F1	Two Bedroom, Den, 2 Bath	2	1,007 s.f.
Total Two Bedroom Units		**114 Units**	**104,332 s.f.**
Apartments Total		**324 Units**	**234,328 s.f.**
Amenity Center			2,400 s.f.
Leasing Office			1,240 s.f.
Laundry, Boiler, Storage			2,500 s.f.
Project Total			**240,468 s.f.**

Parking:

Parking Required

210 One Bedroom Units @ 1.333 cars/unit =	279.93 cars
114 Two Bedroom Units @ 1.667 cars/unit =	190.04 cars
Total Required	**469.97 cars**

Parking Provided

Open Parking (secured)	293 cars
Carport Parking (secured)	150 cars
Total Secured Parking	**443 cars**
Amenity & Other Parking (non-secured)	27 cars
Total Parking Provided	**470 cars**

Total Parking Provided:	Van Accessible	HC Accessible	Standard	Total
Open Parking (secured)	6	11	425	442 cars
Amenity Center	1	0	27	28 cars
Total Parking Provided	7	11	452	470 cars

Appendix II

City of Houston, Texas, Ordinance No. 2009-1043

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE HABITABILITY OF MULTI-FAMILY RENTAL BUILDINGS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the 81st Texas Legislature (Regular Session) passed House Bill 1819 ("HB 1819"), which bill became law on June 19, 2009; and

WHEREAS, HB 1819 added Section 214.219 ("Section 214.219") to the Texas Local Government Code; and

WHEREAS, Section 214.219 requires a municipality with a population of 1.7 million or more to "adopt an ordinance to establish minimum habitability standards for multi-family rental buildings, including requiring maintenance of proper operating conditions" and to "establish a program for the inspection of multi-family rental buildings to determine if the buildings meet the minimum required habitability standards"; and

WHEREAS, HB 1819 requires a municipality subject to Section 214.219 to enact the said ordinance and to establish the said program not later than December 31, 2010; and

WHEREAS, the City is a municipality subject to Section 214.219; and

WHEREAS, the City Council finds that Article V and Divisions 3 and 4 of Article IX of Chapter 10 of the Code of Ordinances, City of Houston, Texas (the "Code of Ordinances") constitute habitability standards for multi-family rental buildings, which standards should be supplemented and strengthened as provided herein; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as a part of this Ordinance.

Section 2. That Chapter 10 of the Code of Ordinances, Houston, Texas, is amended by adding a new Article IV that reads as follows:

"ARTICLE IV. HOUSTON MULTI-FAMILY HABITABILITY CODE

Sec. 10-151. Title; purpose; conflict with other municipal laws.

This article is, and may be cited as, the 'Houston Multi-Family Habitability Code.' One purpose of this Habitability Code is to comply with Section 214.219 of the Texas Local Government Code. The provisions of this Habitability Code are cumulative of all other laws and regulations of the city, as well as all applicable state and federal laws and regulations. In the event of a conflict between this Habitability Code and another law or regulation of the city, the provisions of this Habitability Code shall control.

Sec. 10-152. Definitions.

In addition to definitions appearing elsewhere in this article, the following words and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means the building official and all persons designated in writing by the building official to act on his or her behalf to construe and to enforce this article.

Habitability refers to the character of a multi-family rental building free of any condition constituting a material risk to the physical safety or health of the building's ordinary tenants. A multi-family rental building substantially free of such conditions is *habitable*.

Multi-family rental building or *MFRB* means a building that has three or more units. Only for the purposes of the Inspection Program established by this article, *multi-family rental building* or *MFRB* includes all MFRBs and all accessory buildings (such as a boiler room, laundry room, club house, or garage) on the same tract.

Owner means the current owner (or, collectively, the current owners) of the real property on which a multi-family rental building is located. For the purposes of this article, records available for public view at an official website maintained by the appraisal district in which the MFRB is located are presumed to be accurate with regard to the ownership of real property, but the presumption of ownership may be rebutted by documents properly recorded in the real property records of the county in which the MFRB is located.

Tract means the parcel or parcels of real property on which a

multi-family rental building is located.

Unit means one or more rooms rented for use as a permanent residence under a lease to one or more tenants, except that none of the following shall constitute a *unit*:

(a) A room or rooms rented primarily for the purpose of receiving services regulated by a department or agency of the federal government or of the State of Texas (including, but not limited to, the Texas Department of State Health Services);

(b) A room or rooms owned or operated by a public or private college or university accredited by a recognized accrediting agency within the meaning of Section 61.003, Texas Education Code;

(c) An 'apartment' in a 'condominium' within the meaning of Chapter 81, Texas Property Code; or

(d) A 'unit' in a 'condominium' within the meaning of Chapter 82, Texas Property Code.

Sec. 10-153. Construction of this Habitability Code.

This article shall not be construed to alter the terms of any lease or other agreement between an owner and a tenant relating to an MFRB, except that no provision of any such lease or other agreement shall be construed to excuse compliance with this article or with any other law or regulation of the city. It is not the purpose of this article to prescribe legal rights or liabilities as between an owner and a tenant.

Sec. 10-154. MFRB Registration.

(a) The building official shall promulgate a form for the registration of MFRBs, which form shall require disclosure of:

(1) The physical address of the MFRB;

(2) The account number(s) assigned to the tract by the appraisal district in which the MFRB is located;

(3) The number of buildings on the tract;

(4) The number of units in each building on the tract;

(5) A brief description of the intended use of each building on the tract (residential building, boiler room, laundry room, club house, garage, etc.);

(6) The Project Number(s) appearing on the face of either the Certificate of Occupancy or the Life Safety Compliance Certificate issued by the city for each building on the tract; and

(7) The name, mailing address, physical address, telephone number, and e-mail address (if available) of at least one owner of the MFRB.

(b) The form promulgated by the building official shall provide a physical address and a mailing address for filing completed MFRB Registration Forms. In addition, the building official shall establish a means by which MFRB Registration Forms may be completed and filed electronically.

(c) An owner of an MFRB shall register the MFRB by completing and filing an MFRB Registration Form with the building official.

(d) An owner of an MFRB shall post a hard copy of the current, completed MFRB Registration Form in or on the MFRB.

(e) If an MFRB was not in existence on January 1, 2010, the owner of the MFRB shall register the MFRB by completing and filing the MFRB Registration Form with the building official no later than 30 days after the MFRB receives a Certificate of Occupancy.

(f) Registration of an MFRB as required by this section shall constitute:

(1) Registration of the MFRB under section 28-283 of the Code of Ordinances; and

(2) Compliance with sections 250.003 and 250.004 of the Texas Local Government Code.

(g) No later than 30 days after an owner of an MFRB knows or reasonably should know that a statement on the MFRB Registration Form was incomplete or inaccurate when filed, or has become incomplete or inaccurate since filed, the owner must complete and file an amended MFRB Registration Form.

Sec. 10-155. Habitability standards.

In addition to the habitability standards established by article V and by divisions 3 and 4 of article IX of chapter 10 of this Code:

(1) An owner of an MFRB violates this article if the MFRB does not comply with:

a. All applicable provisions of the Fire Code;

b. Sections L102 through L108 of appendix L of the Building Code (which provisions are part of the Building Code's 'Life Safety Appendix');

c. Sections 10-211 through 10-215 of this Code (which provisions pertain to the numbering of buildings);

d. Sections 43-18 through 43-20 and section 43-23 of this Code (which provisions pertain to swimming pools); and

e. Sections 92.153 through 92.162 of the Texas Property Code (which provisions pertain to security devices).

(2) An owner of an MFRB at all times must post in or on the MFRB:

a. A valid Certificate of Occupancy or a valid Life Safety Compliance Certificate; and

b. A 'NOTICE TO ALL RESIDENTS' legibly typed or printed in a font 28 points or larger, in both English and Spanish, the substance of which Notice is as follows: 'IF ANY CONDITION of this building CREATES A HAZARD to human safety or health, REPORT THE CONDITION to the building's manager or owner. You also may report the condition to the City of Houston by calling the City's Service Helpline at 311.'

(3) Any document required by this article to be posted in or on an MFRB must be posted either (a) as provided by the Building Code or (b) by posting an accurate copy of the document in a manner reasonably protected from weather and in a place conspicuous to ordinary tenants no more than five feet from each mailbox facility at which the United States Postal Service delivers mail to tenants or, if no such facility exists, in some

other place equally conspicuous to ordinary tenants of the MFRB.

Sec. 10-156. Powers and duties of building official.

(a) Except for applicable provisions of the Fire Code incorporated herein by reference, the building official has primary responsibility for the enforcement of this Habitability Code.

(b) With regard to MFRBs only, the terms 'director' and 'neighborhood protection official' as used in article V and in divisions 3 and 4 of article IX of chapter 10 of this Code refer to the building official.

(c) With regard to MFRBs only, the building official has powers and duties equal to and concurrent with the health officer for the enforcement of sections 43-18 through 43-20 and section 43-23 of this Code (which provisions pertain to swimming pools).

Sec. 10-157. MFRB Inspection Program.

(a) The building official shall inspect MFRBs pursuant to an inspection program (the 'Multi-Family Rental Building Inspection Program' or the 'MFRB Inspection Program'), as provided in this section.

(b) The building official shall promulgate a checklist (the 'Multi-Family Rental Building Checklist' or the 'MFRB Checklist') of criteria by which the building official shall determine the habitability of MFRBs.

(1) The MFRB Checklist shall have no force or effect until ninety days after copies of City of Houston Ordinance No. 2009-2009-1043[1] and the MFRB Checklist have been available for public view in the office of the city secretary and at a website maintained by the city.

(2) The building official may amend the MFRB Checklist; however, an amendment of the MFRB Checklist shall have no force or effect until ninety days after the MFRB Checklist has been available for public view in the office of the city secretary and at a website maintained by the city.

(c) No MFRB shall be inspected under the MFRB Inspection Program until at least forty-five days after the building official has mailed to

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[1] The City Secretary shall insert the number of this Ordinance

the owner a letter stating:

(1) The first day of thirty consecutive days during which the building may be inspected under the MFRB Inspection Program;

(2) The physical address of the office of the city secretary and the internet address of the website at which copies of the MFRB Checklist are available for public view;

(3) The amount of the fee (the 'MFRB Inspection Fee') to be paid to the city prior to the first day of the said thirty consecutive days during which the building may be inspected; and

(4) The mailing and physical addresses at which the MFRB Inspection Fee may be paid.

(d) The building official shall mail by first-class mail duplicate originals of the letter required by subsection (c) of this section to the owner of the MFRB at the respective addresses:

(1) Of the owner, according to MFRB Registration Form filed with the building official, or, if the MFRB has not been registered with the building official, according to records available for public view at an official website maintained by the appraisal district in which the MFRB is located; and

(2) Of the MFRB.

(e) No inspection of an MFRB under the MFRB Inspection Program shall be delayed solely because the owner did not receive or did not understand a letter prepared and sent as required by subsections (c) and (d) of this section.

(f) Notwithstanding anything to the contrary in this article, no employee of the city inspecting an MFRB under the MFRB Inspection Program shall enter a unit without the written permission of a person who has a legal right to occupy the unit.

Sec. 10-158. Fees.

For the inspection of an MFRB under the MFRB Inspection Program the owner shall pay to the city the MFRB Inspection Fee, which fee shall be in the amount of either $4.00 per unit or $100.00 (total), whichever amount is greater, plus an administrative fee in the amount of $10.00.

Sec. 10-159. Remedies.

An owner who violates, or whose MFRB is in violation of, any provision of this article shall be guilty of a misdemeanor punishable upon conviction by a fine of not less than $500 nor more than $2,000. Each violation, and each day that a violation continues, shall constitute and be punishable as a separate offense."

Section 3. That nothing in this Ordinance shall delay or otherwise hamper a timely inspection of a multi-family rental building ("MFRB") by the City in response and relating to credible complaints by tenants or other members of the public, such inspections ("reactive inspections"), although not part of the Multi-Family Residential Building Inspection Program ("MFRB Inspection Program") established by this Ordinance, being essential to the public welfare.

Section 4. That, except as otherwise provided by this Ordinance, an owner of an MFRB shall register the MFRB by filing a completed registration form (the "the MFRB Registration Form") with the building official no later than January 31, 2010.

Section 5. That the building official shall use appropriate public and non-public databases to compile a list (the "MFRB List") of the City's MFRBs in numerical order, according to the following priorities:

First, MFRBs not registered with the building official as required by this Ordinance;

Second, MFRBs whose owners have not obtained Certificates of Occupancy or Life Safety Compliance Certificates as required by the Building Code;

Third, MFRBs that were subjects of one or more citations issued during 2009 for violations of the Building Code; and

Fourth, all other MFRBs.

Within the four groups described immediately above, MFRBs shall be ordered in a manner reasonably consistent with their respective dates of construction, older MFRBs first. For the purposes of this Ordinance, the date of an MFRB's construction is the most recent of (a) the date of construction according to the registration required by this Ordinance, unless the building official reasonably concludes that such information is not reliable; or (b) the date of construction according to an official website maintained by the appraisal district in which the MFRB is located; or (c) the date on which the building official issued a Certificate of Occupancy or a Life Safety Compliance Certificate for the MFRB.

Section 6. That the MFRB List shall be available for public view in the office of the City Secretary and at a website maintained by the City at least forty-five days before the building official conducts an inspection pursuant to the MFRB Inspection Program. The office of the City Secretary and said website both shall provide a mailing address for the submission of additional buildings that members of the public believe should be included on the MFRB List. Any building so added to the MFRB List shall be assigned the next consecutive number. In addition:

(1) A newly constructed or rehabilitated multi-family rental building shall be added to the MFRB List four years after the date on which a Certificate of Occupancy is issued for the building;

(2) For the purposes of subsection (1) immediately above, a Life Safety Compliance Certificate is not a substitute for a Certificate of Occupancy;

(3) The building official may add a building to, or delete a building from, the MFRB List as long as the addition or deletion is consistent with the purposes and requirements of this Ordinance; and

(4) If the building official deletes a building from the MFRB List, the number to which the building had been assigned shall be marked "Deleted," and the building official shall make a reasonable effort to avoid reassigning numbers to buildings on the MFRB List.

Section 7. That the building official's enforcement of the MFRB Inspection Program shall include inspections conducted in the order the buildings appear on the MFRB List, except that, with regard to buildings to whose owners the building official properly has sent letters stating that the buildings will be inspected during the same thirty-day period, the building official may inspect the said buildings in any order during the said period.

Section 8. That, as soon as reasonably possible, the building official shall schedule for a reactive inspection any building added to the MFRB List after February 15, 2010, for which neither a Certificate of Occupancy nor a Life Safety Compliance Certificate has been issued.

Section 9. That, when all buildings on the MFRB List have been inspected under the MFRB Inspection Program, the building official shall reinspect the buildings in the order the buildings appear on the MFRB List, repeating the inspection cycle *ad infinitum*, except that the building official shall omit from the then-current reinspection cycle any building that during the preceding four years:

(1) Has been inspected at least once pursuant to the MFRB Inspection Program;

(2) Has not been the subject of a "notice of violation" within the meaning of the Building Code; and

(3) Has not been the subject of a citation alleging a violation of the Building Code or of Division 3 or Division 4 of Article IX of Chapter 10 of the Code of Ordinances.

Section 10. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not

be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 11. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the ninetieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this 4th **day of** November, **2009.**

Bill White
Mayor of the City of Houston

Requested by Michael S. Marcotte, P.E., Director
Department of Public Works & Engineering

Prepared by Legal Dept. [signature]
First Assistant City Attorney

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
✓		HOLM
	ABSENT	GONZALEZ
✓		RODRIGUEZ
	ABSENT	BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: NOV 1 0 2009

Appendix 15
City Workforce Protection Measures

The City is committed to ensuring that the construction it finances protects workers on these projects by making sure they are safe, are compensated in accordance with applicable law and have access to pathways for sustainable careers in the construction industry. Contractors who work on developments financed under this NOFA will be required to implement certain policies designed to ensure every worker on the project is safe, receives appropriate pay, and has a path toward building a career in construction. All contractors of any tier that perform work on the development, unless otherwise specified, will be required to comply with the following workforce protection program and employment measures.

The City acknowledges many of these provisions may require additional costs. The department will consider award requests sufficient to cover additional costs associated with the new requirements. However, the City will still require the limitation of CDBG-DR awards to no greater than 50% of total development costs. The City reserves the right to revise the requirements of the workforce protection measures on an as-needed basis before and after issuance of CDBG-DR awards.

Pay or Play

In an effort to create a level playing field for competing contractors, the Pay or Play program (POP) mandates City Contractors to offer their employees a minimum level of health benefits or contribute a prescribed amount towards "Contractors Responsibility Fund" to defray the costs of providing health care to uninsured people in the Houston and Harris County area.
This program applies to contracts for services in which the total expenditure by the City, including contingencies, amendments, supplemental terms and/or change orders equals or exceeds $100,000. This program also applies to subcontracts for services in which the total value of the subcontract, including contingencies, amendments, supplemental terms and/or change orders equal or exceeds $200,000.

All project contractors (of any tier) must comply with the City's Pay or Play policies with regard to every Section 3 worker and apprentice-level worker that they employ for work on the project. Prior to the commencement of a covered contract, the contractor will declare its intent to comply with the Program and will submit a plan for compliance. Contractors will report to the City regarding the identity of covered subcontracts and covered employees working under subcontracts in the form and manner prescribed by the Administer (060).

Pay

If the contractor elects to comply by paying, the contractor will pay to the City $1 for each regular hour of work performed by covered employees, including covered employees of covered subcontractors. All payments will be deposited into the City shall be deposited in the Contractor Responsibility Fund.

Play

If the contractor elects to comply by "playing", the contractor will provide documentary proof in a form acceptable to the Administrator that it provides the requisite level of health benefits provided with health benefits. A contractor must contribute no less than $150 per covered employee per month toward the total premium cost; and the covered employee may not contribute more than $150 per month toward the premium. A contractor is deemed to have complied with this provision with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than $40 per month. Program exceptions such as waivers and types of contracts that do not require participation can be found in Executive Order 1-7. For additional information regarding the City of Houston, Housing and Community Development Department compliance requirements you may visit: http://vvww.houstontx.gov/housinq/multifamilycompliance.html.

Workers' Compensation

The owner and general contractor will provide workers' compensation coverage provided with either project level policy or umbrella policy provided by the owner or GC HCDD will require that the owner and GC place signage onsite to properly inform workers of their benefits under this coverage. Developer must provide the Director of HCDD or his or her designee with evidence of worker's compensation coverage at the time of loan closing. Awardees will be subject to these terms which will be included within the loan agreement.

Safety Training and Hourly Base Wage Rate

The owner and general contractor will be required to ensure that (1) all individuals performing project work, regardless of job designation or employment status, have received OSHA 10 certification and (2) at least one (1) on-site supervisor with OSHA 30 certification is present on the job site at all times that work is being performed. In addition, any individual performing project work, regardless of job designation or employment status, will receive a minimum hourly wage of no less than the higher of (1) $15.00 per hour or (2) the Federal prevailing wage. The owner and general contractor will be required toprovide disclosure of their safety record and written Health and Safety Plan at the time of contracting.

If the applicant elects to include their statement on safety training, they will be required to certify within the HCDD contract they will employ contractors with adequate OSHA training. HCDD will require the construction contract with the general contractor include this provision as an addendum. HCDD will test compliance during onsite visits and payment applications.

If the applicant elects to include their statement on an hourly base wage rate, they will be required to certify within the HCDD contract they will comply with the Hourly base rate requirement of $15.00 per hour for each worker. HCDD will require the construction contract with the general contractor include the Hourly Base Rate of $15.00 requirement along with the applicable DBRA wage scale as an addendum. HCDD will test compliance during construction. Awardees will be subject to these terms which will be included within the loan agreement.

Employment Training and Apprenticeships

HCDD expects project contractors to commit to the development of their craft workforce and invest in skills training linked to construction career paths. A minimum of 20% of all labor hours on each project must be performed by individuals enrolled in apprenticeship or craft training programs that are certified by the U.S. Department of Labor.

Owners will be required to certify within the HCDD contract they will employ contractors that adhere to the employment and apprenticeship policy. HCDD will require the construction contract with the general contractor include acknowledgement that 20% of all labor hours will be performed by apprentices enrolled in apprenticeship or craft training programs that are certified by the Department of Labor. HCDD will test compliance during construction. Awardees will be subject to these terms which will be included within the loan agreement.

The general contractor is required to participate in a survey in regards to Fair Chance Hiring Policies.

Section 3

Awardees must, to the greatest extent feasible, employ Section 3 Residents (as defined in Title 24 CFR Part 135) for 30 percent (30%) of the aggregate number of new hires for each year over the duration of the project. At a minimum, awardees must, to the greatest extent feasible, ensure that 20 percent (20%) of all project work hours are performed by Section 3 Residents. Awardees will be subject to these terms which will be included within the loan agreement.

Employment Classification

HCDD expects its awardees to hire responsible contractors who can reliably verify the proper employment classification of all individuals they engage to perform work on covered projects and provide verified reporting of wages owed and paid to employees and monthly certified payroll data to the City.

All Section 3 workers and apprentice-level workers must be directly employed by a project contractor. In addition, all self-employed workers will be subject to the same compensation standards and protections as other employees/contractors outlined in this policy.

Awardees will be subject to these terms which will be included within the loan agreement.

Davis Bacon and Related Acts (DBRA)/Labor Standards Provisions

All City financed developments require compliance with the Davis-Bacon Labor Standards no matter the use of HCDD's funds. Davis-Bacon and Related Acts require that prevailing wage rates be paid to all construction laborers regardless of job designation or employment status.

Compliance Plan

The Borrower and Owner will be required to submit a plan for implementing these measures. The plan is not required to have detailed procedure, but at minimum an acknowledgement that the applicant will inform general contractors that they and all subcontractors of any tier will be subject to these terms when solicited for the referenced development.

APPENDIX 16

ADDITIONAL SUBRECIPIENT REQUIREMENTS

The following requirements supplement the obligations of the Subrecipient under the Agreement. Failure of the Subrecipient to comply with these provisions shall constitute a Default under the Agreement entitling the City to exercise its rights and remedies under the Agreement at the Director's option. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

- Scope of Services. The Subrecipient shall be responsible to perform or cause Owner to perform the requirements of the Agreement with the major goals being: (i) the demolition of an existing apartment facility and construction of a 197 unit multifamily affordable housing project known as 2100 Memorial, Houston, Texas in accordance with the requirements of the Agreement within the time allowed by the Construction Schedule set forth in Exhibit E to the Agreement; and (ii) the construction, operation, leasing and maintenance of 100 affordable housing units (over 51% of all units) to low or moderate income households earning 80% or less of the area median income during the Affordability Period in accordance with the rent and other requirements of Sections 6.8-6.14 and other applicable Sections of the Agreement, Attachment A of the Agreement and Appendix 1 (Applicable Laws, Rule, Regulations) of the Agreement. Subrecipient will be responsible for supervising and monitoring Owner's performance under the Agreement as well as general administration of the Project (including, without limitation, reporting and record keeping). Subrecipient is responsible for ensuring that all tasks under the Agreement are performed either by Owner or Subrecipient in accordance with the Agreement and all Applicable Laws. The scope of the work, program, deliverables and the Subrecipient's obligations are more particularly set forth in the Agreement (including its Appendices, Exhibits and Attachments thereto).

- Levels of Performance. Subrecipient's performance shall be measured and monitored by the City against the goals, requirements, time lines and standards set forth in the Agreement including its Appendices, Exhibits and Attachments and compliance with Applicable Law. If Subrecipient's performance is determined to be substandard, termination and suspension procedures may be initiated after notice and an opportunity to cure is given Subrecipient under the Agreement.

- National Objective. The national objective to be addressed through the use of the CDBG funds to be provided to Subrecipient under this Agreement is to aid and benefit low and moderate income families by replacing affordable housing damaged or destroyed by Hurricane Harvey. See Section 1B of the Agreement.

- Time of Performance and Milestones: The term of the Agreement commences with the closing of the City Loan to Subrecipient and Owner and extends through the Affordability Period (40 years from Project Completion). Closing of both Tranche 1 and Tranche 2 of the City Loan must occur no later than June 30, 2021. Demolition must start within thirty (30) days the Closing of the City's Loan and Project Completion must occur within thirty-one (31) months after Closing. Construction milestones are set forth in the Construction Schedule set forth in Exhibit E to the Agreement.

  Project lease-up will occur within six (6) months following Project Completion, and thereafter the designated one hundred (100) affordable units will be leased in accordance with the requirements of Agreement (including, without limitation, Sections 6.8-6.14 and the Restrictive Covenants set forth in Attachment A to the Loan Agreement.

- Personnel and Staffing. The following personnel of Subrecipient are assigned to the Project:

Staff Name and Title	Program Responsibilities	Time Allocation %
Mark Thiele	Communicate with Government Officials	5%
Obie Diaz	Communicate with GC and Architect	10%
Cody Roskelley	Coordinate with Columbia Residential during all phases of the project.	10%

- Budget. The amount to be advanced to Subrecipient under the Agreement is $25,000,000.00 which together with the other sources of financing set forth in Exhibit B to the Agreement shall be expended in accordance with the Budget set forth in Exhibit C to the Agreement for the Scope of Work described in Exhibit D of the Agreement. Advances of the City Note may only be for hard construction and other eligible costs under the Agreement. Advances shall be made in accordance Sections 6.1 and 9 of the Agreement.

- Procurement. The Subrecipient will comply with the City's current procurement policies for the acquisition of services and materials with respect to the Project as set forth in the City of Houston Build it Forward Housing Recovery Program – Harvey Multifamily Program Guidelines ("City Guidelines") found at .https://houstontx.gov/housing/plans-reports/guidelines/multifamily/Harvey_Multifamily_Proigram_Guidelines-v5_1-043020.pdf (See Pages 18 and 19). In addition, The Subrecipient and any vendors, contractors or subcontractors must use the federal procurement and contract requirements set forth in 2 CFR 200 including, without limitation, 2 CFR 200.318-200.327 as modified by 24 CFR 570.502 as well as State and local procurement requirements.

- Program Income. The Subrecipient will comply with the City's current program income policies as found on Page 25 of the City Guidelines, and the use of any program income earned will be subject to the rules outlined in Federal Register notice 83 FR 5844 and 24 CFR 570.504. Subrecipient will be required to track and report program income (as defined at 24 CFR 570.504) and the use of such program income for eligible activities to the City [annually and at closeout]. Except for payments owing under the Subrecipient's Note to the City, the Subrecipient shall be entitled to retain program income to implement other eligible activities outlined in 24 CFR 570.504, but any such expenditures shall be subject to the Agreement and shall be monitored by the City. Once program income commences, no further advances of the City Loan can be made until all program income is expended in accordance with this Section. Upon expiration and closeout of this Agreement, any unexpended program income and accounts receivable relating to the CDBG funds must be returned to the City.

- Other Program Requirements. Subrecipient will carry out its activities under the Agreement in compliance with the requirements of Subpart K of 24 CFR 570, except that the Subrecipient does not assume the City's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR Part 570.

- Uniform Administrative Requirements. Subrecipient will carry out its activities under the Agreement in compliance with the requirements of 24 CFR 200 as modified by 24 CFR 570.502.

- Public Access to Records. Subrecipient will give the public access to records on use of CDBG funds consistent with state and local law privacy rights and 24 CFR 570.508. Notwithstanding the foregoing, the information collected concerning the individual tenants occupying the affordable housing units shall be kept private and not be disclosed except to the extent directly related to Subrecipient's responsibilities under the Agreement.

- Real Property. The Subrecipient (or its parent or affiliate) shall be entitled to retain title to the Project upon closeout of the Agreement and expiration of the Affordability Period provided that no default under the City Loan then exists.

- Closeout. Upon expiration of the Affordability Period if no Borrower or Owner Default then exists and all of Subrecipient's obligations under the Agreement (including the closeout obligations specified in 24 CFR 570.502 and 570.509), the Borrower Note will be deemed paid and the lien of the Deed of Trust released.

- Additional Subrecipient Requirements. Additional requirements for the Subrecipient are located in the following locations in the Agreement which list is not intended to be inclusive of all Subrecipient requirements and nothing contained herein is intended to limit Subrecipients obligations under the Agreement:

CDBG SUBRECIPIENT REQUIREMENTS	LOCATION IN SUBRECIPIENT AND LOAN AGREEMENT
1. Scope of Work	Appendix 16 (Additional Subrecipient Requirements) and Agreement generally
2. National Objective	Appendix 16 (Additional Subrecipient Requirements) and Sections 6.8- 6.15 of the Agreement
3. Time of Performance	Sections 1C, 4.5, 6.2.1, Exhibit E (Construction Schedule) and Appendix 16 (Additional Subrecipient Requirements)
4. Personnel Assigned to Scope of Work	Appendix 16 (Additional Subrecipient Requirements)
5. Levels of Performance	See Loan Agreement, Appendices, Exhibits and Attachments generally
6. Budget	Section 3.9 and Article 11; Exhibit C (Project Budget); Appendices 1(Applicable Laws, Rule, Regulations)
7. Project Schedule/Milestones	Sections 1C, 4.5, and 6.2.1; Exhibit E (Construction Schedule); Appendix 16 (Additional Subrecipient Requirements)
8. Compensation/Method of Payment	Sections 6.1 and 9
9. Program Income	Appendices 1(Applicable Laws, Rule, Regulations) and 16 (Additional Subrecipient Requirements)
10. Record Keeping Requirements	Section 6.15; Appendices 1(Applicable Laws, Rule, Regulations) and 16 (Additional Subrecipient Requirements)
11. Reporting Requirements	Section 6.15; Appendices 1(Applicable Laws, Rule, Regulations) and 16 (Additional Subrecipient Requirements)
12. Public Access to Program Records	Appendix 16 (Additional Subrecipient Requirements
13. Record Retention	Section 6.15.6; Appendix 1 (Applicable Laws, Rule, Regulations)
14. Close-Out Procedures	Appendix 16 (Additional Subrecipient Requirements
15. Uniform Administrative and Program Management Standards	Incorporated by reference to 2 C.F.R. Part 200 in Appendix 1 as modified by 24 CFR 570.502; See

	also Appendix 16 (Additional Subrecipient Requirements)
16. Use and Reversion of Assets	Appendix 16 (Additional Subrecipient Requirements)
17. Real Property	Appendix 16 (Additional Subrecipient Requirements)
18. Other Program Requirements	Appendices 1 (Applicable Laws, Rule, Regulations) Labor Standards: Appendices 3 (Construction Contract Requirements), 9 (MWBE and Labor Standards) and 15 (Work Force Protection) Environmental Standards: Sections 1L1, 3.15 and 5.4; See also Attachment N (Environmental Indemnity) Displacement and Relocation: Section 6.23; Appendix 11 Employment and Contracting Opportunities: Sections 1K, 6.17, and 6.20; Appendix 3 (Construction Contract Requirements) and Appendix 9 (MWBE, Section 3 and Labor Standards) Lead Based Paint: Section 6.23 ADA/Architectural Barriers: Section 6.23 Conflict of Interest; Sections 1L and 2.12 Debarment: Section 10.5; Appendix 7 National Flood Insurance Program: Sections 1L1, 3.15.3, and 18.15 Uniform Administration Requirements, Cost Principles and Audit Requirements: incorporated by reference to 24 CFR 200 (See Appendix 1) Other (Eligibility of Resident Aliens, House Counseling and Executive Order 12372): to the extent applicable, incorporated by reference to 24 CFR 200 as modified by 24 CFR 570.502 (See also Appendix 1) Promotion of Fair Housing: Section 6.8-6.14 and whole Agreement generally; See also Appendices 1 (Applicable Laws, Rule, Regulations)
19. Suspension and Termination	Sections 5.1, 5.2, 6.1.3, and 10 of Agreement
20. Compliance with Laws and Regulations	Section 6.23; Appendix 1 (Applicable Laws, Rule, Regulations)

21. Antidiscrimination/Affirmative Action and Equal Employment Opportunity	Appendix 1 (Applicable Laws, Rule, Regulations); See also Sections 1K, 6.17, and 6.20; Appendix 3 (Construction Contract Requirements) and Appendix 9 (MWBE, Section 3 and Labor Standards)
22. Financial Management	Section 6.15
23. Audits	Sections 6.1.3, 6.15 and 10.1.14; Appendix 1 (Applicable Laws, Rule, Regulations);
24. Religious and Lobbying Activities	Appendix 1 (Applicable Laws, Rule, Regulations); Appendix 6 (Lobbying Certificate); Appendix 16 (Other Subrecipient Requirements); Incorporation of 24 CFR 570.200(j) dealing with conditions prohibiting inherently religious activities (if applicable)
25. Budget Modifications	Sections 3.9 and 9.4; Appendix 1 (Applicable Laws, Rule, Regulations)
26. Monitoring	Sections 6.8-6.15;
27. Conflict of Interest	Sections 1L and 2.12; Appendix 1 (Applicable Laws, Rule, Regulations)
28. Procurement Standards and Methods	Appendix 16 – Additional Subrecipient Requirements; Appendix 1 (Applicable Laws, Rule, Regulations)
29. Environmental Issues	Sections 1L, 3.15, 5.4 and 18.22 of Agreement; Attachment N (Environmental Indemnity Agreement); Appendix 1 (Applicable Laws, Rule, Regulations)

EXHIBITS TO LOAN AGREEMENT

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

EXHIBIT A

LEGAL DESCRIPTION

Unrestricted Reserve "A", in Block One (1), of TWENTY ONE HUNDRED MEMORIAL, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code No(s). 693416, of the Map Records of Harris County, Texas

ALSO DESCRIBED WITH METES AND BOUNDS AS FOLLOWS:

AS SURVEYED
METES AND BOUNDS DESCRIPTION
1.561 ACRES (68,009 SQUARE FEET)
JOHN AUSTIN SURVEY, ABSTRACT NUMBER 1
HARRIS COUNTY, TEXAS

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the POINT OF BEGINNING and containing 1.561 acres (68,009 square feet) of land.

EXHIBIT B

Commitments for "Other Financings"

National Equity Fund, INC
an affiliate of LISC

February 9, 2021

2100 Memorial Redevelopment, LP
c/o Mr, Ben King
Columbia Residential
1718 Peachtree Street, NW
Atlanta, GA 30309

Re: **2100 Memorial** (the "Project")

Dear Mr. King:

On behalf of National Equity Fund, Inc. ("NEF"), I am pleased to provide this Letter of Intent ("Letter") which outlines the principal business terms of our proposed investment in the above-named Project. We invest through our affiliate, NEF Assignment Corporation ("Assignment Corporation"), by purchasing a [99.99%] interest in the Limited Partnership formed to own and operate the Project. When we refer to "NEF," we mean National Equity Fund, Inc. and its affiliates, including without limitation Assignment Corporation. As a preliminary matter, I will note that the terms of this Letter are based on certain assumptions which are incorporated in the financial projections attached to this Letter ("Projections"). Changes in those assumptions may result in changes to the terms of our proposed investment.

Upon your acceptance of this Letter, we will begin our standard due diligence activities and seek internal approval of this investment. Upon successful completion of our due diligence and receipt of internal approvals, we will prepare an Limited Partnership Agreement, based on our current model form ("Limited Partnership Agreement"), and related closing agreements. These agreements will incorporate the terms appearing in this Letter, subject to any modifications that may be required to obtain final investment approval. We will then proceed to close this investment.

EXHIBIT B

1. Property Information

The Project consists of the new construction of 197 units of senior, low income housing tax credit units (the "Tax Credit Units") located in Houston, TX. 159 units will be Tax Credit Units with rents targeted to seniors with 30-60% AMI, 39 of the LIHTC units will have project based vouchers. The remaining 38 units will be unrestricted at market rents.

2. Property Ownership

Limited Partnership:	2100 Memorial Redevelopment, LP (the "Partnership")
General Partner:	2100 Memorial Redevelopment GP, LLC, a single purpose entity whose sole member is APV Redevelopment Corporation (an affiliate of Houston Housing Authority); 0.005%
Administrative Limited Partner:	Columbia Memorial, LLC, a taxable entity owned by an entity or entities related to Columbia Residential; 0.005%
Sponsor/Developer:	New Affordable Housing Partners, LLC (affiliate of Columbia Residential) and SDK Memorial, LLC (affiliate of Creekstone Companies)
Guarantor(s):	New Affordable Housing Partners, LLC, New Columbia Residential, LLC, New Columbia Residential Property Management, Columbia Residential Property Management, Columbia Residential, LLC, and AHP, Inc (all Columbia related entities) - required to provide combined liquidity and net worth covenants of $1MM and $5MM respectively. SDK Interests II (GP of SDK Memorial, LLC) - required to provide combined liquidity and net worth covenants of $1MM and $5MM respectively. 2100 Memorial Redevelopment GP, LLC. All guarantors are joint and several. Covenant amounts subject to final underwriting.
Limited Partner:	One or more investor funds, limited partnerships or limited liability companies of which NEF or its affiliate is the general partner or managing member, or Assignment Corporation, as nominee, on behalf of one or more such entities.

3. Other Parties

General Contractor:	Block Companies (affiliate of Creekstone Companies)
Property Manager:	New Columbia Residential Property Management
Project Accountant:	TBD
Project Attorney:	TBD

Note: All parties must be approved by NEF

EXHIBIT B

4. Project Financing

A. Construction Loan. The terms of this LOI are subject to selecting Wells Fargo as the construction debt provider. Wells Fargo issued a commitment to provide construction debt up to $31,000,000 for 36 months at an indicative interest rate of 2.45%.

B. Permanent Financing. The permanent financing on the project is as follows: (All loans are non-recourse loans, unless otherwise noted, and all financing structures must be acceptable to NEF.)

Lender	Lender/Source	Amount	Interest Rate	Term	Amort	Hard/Soft Debt	Available During Const. (y/n)
First Mortgage	Citi	$11,700,000*	4.33%	15	35	Hard	N
Second Mortgage	Houston DR - HHA	$25,000,000**	1.00%	15	35	Soft	Y
Third Mortgage	FEMA/HHA Loan	$4,863,962**	1.00%	30	30	Soft	Y

Permanent amortizing debt must be a fixed-rate commitment for a minimum of 15 years with terms acceptable to NEF.

*NEF will work with sponsor/lender on debt sizing and underwriting assumptions

**NEF's LIHTC pricing and terms assume the City of Houston DR and FEMA loans can be classified as Non-Recourse for minimum gain purposes – NEF will work with City, HA, legal, etc to get a structure that works for everyone and results in an acceptable Capital Account.

5. Timing Assumptions

This Letter is based on the following timing assumptions:

Benchmark	Date
Partnership Closing	July 1, 2021
Construction Start	July 1, 2021
Placed In Service Date	July 1, 2023
100% Qualified Occupancy	July 1, 2024
Stabilized Occupancy	October 1, 2024

EXHIBIT B

If these timing assumptions are not met, the terms of our proposed investment are subject to change. The term "Tax Credit Compliance Period" means, for each building in the Project, the 15 taxable years beginning with the first taxable year of the 'Credit Period', as defined in Section 42 of the Internal Revenue Code, as amended ("Code").

6. **Tax Credits/Historic Credits ***

	Allocation
Year:	2021
Allocation Agency:	TDHCA
Credit Percentage:	4%
Locked-in (y/n):	Y
Applicable Fraction:	80.6%
Basis Boost DDA/QCT or (as evidenced by letter from allocating agency) granted by state (y/n):	Y – 130%
Projected Annual Tax Credits:	$1,943,749

Timing of Credits	**Amount**	**Projected Year**
Projected 1st Year Tax Credits:	$1,679,896	2024
Projected Years 2-10 Tax Credits:	$1,943,749	2025-2033
Projected Tax Credits Year 11:	$263,853	2034

*All references to 'Tax Credits' shall mean low-income housing tax credits under Section 42 of the Code; references to 'Historic Credits' shall mean the federal rehabilitation tax credits under Section 47 of the Code.

7. **Tax Credit Price and Pay-In Schedule**

The Limited Partner will purchase the Tax Credits described in Paragraph 6 for a total purchase price of $17,783,521 ("Capital Contributions"), or $0.915* cents for each $1.00 of projected Tax Credits. Proceeds of the Capital Contributions will be used to fund Project equity ("Project Equity") and the non-deferred portion of the Developer Fee ("Non-Deferred Developer Fee"). NEF will advance Project Equity and the Non-Deferred Developer Fee in installments, based upon its determination that the conditions specified in the Limited Partnership Agreement for payment of that installment ("Applicable Conditions") have been met. We make this determination based on our review and approval of certain documents you provide to us. Equity disbursements during construction are expected to be made through the construction lender's escrow or, if there is no construction lender, through a title company using a disbursement agreement acceptable to NEF. We currently expect installments of

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Project Equity will be paid according to the schedule below. The schedule identifies some of the Applicable Conditions that will apply to each payment.

**LIHTC pricing subject to no less than $6,000 per unit in personal property and $745,000 in expenses related to Lease-Up/Marketing*

A. First Installment: $3,170,005 (17.8%). The Applicable Conditions for this payment will include satisfactory evidence or approval of:

(i) Admission of NEF to the Partnership and commencement of construction;
(ii) Receipt of 168(h)(6)(F)(ii) election attached to General Partner's tax return.

$55,000 of this installment will be used to pay for NEF's due diligence and closing costs, including the issuance of the tax opinion.

B. Second Installment: $8,530,426 (48.0%). The Applicable Conditions for this payment will include satisfactory evidence or approval of:

(i) Completion of 100% of Project construction;
(iii) Temporary (or, if available, Final) Certificates of Occupancy;
(iv) Architect's certification indicating that all the work has been completed substantially in accordance with plans and specifications;
(v) Draft Cost Certification verifying the Tax Credit basis;
(vi) Accountant's certification that the 50% bond test has been met;
(vii) Owner's title insurance policy in final form; and
(viii) No-earlier-than payment date of: July 1, 2023

C. Third Installment: $5,758,344 (32.4%). The Applicable Conditions for this payment will include satisfactory evidence or approval of:

(i) 100% Qualified Occupancy of all Project Tax Credit Units;
(ii) Funding of the Project's permanent loan and receipt of executed permanent loan documents in approved form;
(iii) Payment of any amounts required by the General Partner's Development Completion Guaranty;
(iv) Achievement of Stabilized Occupancy (generally defined as at least 90% occupancy with a Debt Service Coverage Ratio of 1.15 or better for a three consecutive month period after construction completion);
(v) Completion of any outstanding punch list items;
(vi) Owner's date down title insurance coverage;
(vii) "As-Built" ALTA survey;
(viii) Final lien waivers from the General Contractor;
(ix) Final Certificates of Occupancy, if not previously provided;
(x) Final Cost Certification verifying the Tax Credit basis;
(xi) Funding of Project reserves (or funding with the proceeds of this installment) at the required levels;
(xii) If applicable, satisfaction of radon testing requirements;

EXHIBIT B

(xiii) Recorded Extended Use Agreement; and
(xiv) No-earlier-than payment date of: October 1, 2024

$921,000 and $59,100 of this installment will be used to fund the Operating Reserve and Capitalized Replacement Reserve respectively

D. Fourth Installment: $324,746 (1.8%). The Applicable Conditions for this payment will include satisfactory evidence or approval of:

(i) The first year's tax return and K-1;
(ii) Fully executed Form 8609 for all Project buildings; and
(iii) Occurrence of the following no-earlier-than payment date: October 1, 2024

8. Developer Fee

The Developer will earn a fee for development services in the total amount of $6,800,000 (the "Developer Fee"). A portion of the Developer Fee in the amount of $305,080 (4%) will be deferred ("Deferred Developer Fee") and payable from cash received from the operation of the Partnership, after payment of debt service and operating expenses ("Cash Flow"), during the Tax Credit Compliance Period. Any principal balance and/or accrued interest on the Deferred Developer Fee remaining unpaid by the end of the fourteenth (14th) year of the Tax Credit Compliance Period must be paid in full by the General Partner.

The non-deferred portion of the Developer Fee will be paid from the Capital Contributions as described in the following schedule upon the satisfaction of the Applicable Conditions for each installment.

Capital Contribution Installment	Percentage of Total Fees	Amount of Payment
Upon the First Installment	25.00%	$1,623,730
Upon the Third Installment	25.00%	$1,623,730
Upon the Fourth Installment	45.00%	$2,922,714
Upon the Fifth Installment	5.00%	$324,746
Total:	**100%**	**$6,494,920**

EXHIBIT B

9. **Adjustments to Purchase Price (Credit Adjusters)**

Low Income Housing Tax Credit Adjusters

(i) **Permanent Reduction in Tax Credits.** If actual Tax Credits allocated to the Project as determined by the Project Accountant are less than the projected Tax Credits, the Capital Contributions will be decreased by $0.915 times the difference between the actual Tax Credits and the projected Tax Credits. If the amount so calculated exceeds remaining unpaid Capital Contributions, the General Partner must pay to the Partnership an amount that makes up the difference and compensates the Limited Partner for the permanent reduction in Tax Credits on an after-tax basis.

(ii) **Timing Difference in Tax Credits (Downward) – First Year Tax Credits.** If Tax Credits are not available to the Limited Partner during the Project's first tax credit years in the amounts shown in Paragraph 6 above, the Capital Contributions will be reduced by $0.40 times the amounts of the first year Tax Credit shortfalls. This reduction is intended to compensate the Limited Partner for the reduced present value of such Tax Credit shortfalls, while taking into account the Tax Credits the Limited Partner may be entitled to receive no later than the 11th years of the Compliance Period. If the amount so calculated exceeds remaining unpaid Capital Contributions, the General Partner must pay to the Partnership an amount that makes up the difference and compensates the Limited Partner for the timing difference in Tax Credits on an after-tax basis.

(iii) **Permanent Increase in Tax Credits.** Subject to the limitations described in Paragraph 9.A.(v) below, the Limited Partner will increase its Capital Contributions to the Partnership by an amount that is equal to the amount of additional Tax Credits times the price per Tax Credit specified in Paragraph 7.

(iv) **Timing Difference in Tax Credits (Upward) – First Year Tax Credits.** If the amount of actual Tax Credits for the period prior to the end of the projected first tax credit years for the Project will be greater than the projected Tax Credits for the period prior to the end of projected first tax credit years as shown in Paragraph 6 above and NEF receives satisfactory written documentation to evidence the allocation of the tax credit increase for such periods, then, subject to Paragraph 9.A.(v) below, the Limited Partner will increase its Capital Contributions to the Partnership by an amount equal to (a) $0.40 multiplied by (b) the difference between the amount of actual Tax Credits for the period prior to the end of the projected first tax credit years and the projected Tax Credits for the period prior to the end of the projected first tax credit years as shown in Paragraph 6 above.

EXHIBIT B

(v) **Limitations on Upward Adjusters.** The Investor Member will increase its Capital Contributions only once during the 90-day period following the later of the (a) Stabilized Occupancy or (b) issuance of the Form 8609 for all buildings. The Investor Member will increase its Capital Contributions under Paragraph 9.A.(iii) and 9.A.(iv) if we determine that there are sufficient funds available to make the additional Capital Contributions or if investors in the Investor Member agree to contribute additional capital to fund the additional Capital Contributions. Any such upward adjustments under Paragraphs 9.A.(iii) and 9.A(iv) up to a total maximum of 5% of the Investor Member's original Capital contributions will not require approval of Investor Member's investors. Upward adjustments that exceed in total the 5% limitation will require such approval.

(vi) **Ongoing Tax Credit Shortfall.** If for any fiscal year after the end of the first Tax Credit year, the actual Tax Credits we receive are less than the projected Tax Credits, or if there is recapture (as defined in Section 42 of the Code) of Tax Credits, then any remaining portion of the Capital Contributions will be reduced by one dollar for each dollar of reduction of the projected Tax Credits and each dollar of Tax Credits that is recaptured. If the reduced and/or recaptured Tax Credits exceeds any remaining unpaid Capital Contributions, then the General Partner must pay to the Partnership an amount that makes up the difference and compensates the Limited Partner for the reduction and/or recapture of Tax Credits on an after-tax basis.

10. Reserve Requirements

A. **Operating Reserve**. $921,000, equal to (6 months of operating expenses, debt service and replacement reserves) will be funded from a portion of the Limited Partner's Capital Contributions. The General Partner will be permitted to use funds in the Operating Reserve account prior to any draw on its Operating Deficit Guaranty obligation. We approve all withdrawals from the Operating Reserve account. This Operating Reserve account remains with the Partnership through the Tax Credit Compliance Period and any funds in the account at the end of that period will be distributed according to the priorities identified for Sale/Refinancing proceeds under Paragraph 13 hereof.

B. **Replacement Reserve**. The General Partner must fund the Replacement Reserve account in the annual amount of $300 per unit per year (to be increased annually by three percent (3%) from Project revenues throughout the Tax Credit Compliance Period. We must approve withdrawals that in the aggregate during any calendar year exceed the lesser of (i) $5,000 or (ii) ten percent (10%) of the amount then remaining in the Replacement Reserve account. Any funds remaining in the Replacement Reserve account at the end of the Tax Credit Compliance Period will be distributed according to the priorities identified for Sale/Refinancing proceeds under Paragraph 13 hereof.

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11. General Partner Guaranties and Other Obligations

A. **Development Completion Guaranty.** The Guarantors will provide an unlimited guarantee of development completion which includes payments required for construction completion, funding of any operating deficits prior to Stabilized Occupancy, and conversion of the construction loan to a right-sized permanent loan having debt service requirements consistent with targeted debt service coverage levels. The General Partner will provide monthly reports to us during construction. The general contractor will provide (i) either a Stipulated Sum Contract or a Guaranteed Maximum Price Contract (using the current AIA form of agreement), and (ii) either a letter of credit equal to 15% of the total construction cost or a 100% payment and performance bond.

B. **Operating Deficit Guaranty**. The Guarantors will provide an Operating Deficit Guaranty in the amount of $921,000 (equivalent to 6 months of operating expenses, replacement reserves, and debt service) until the Project has maintained a 1.15 annual Debt Service Coverage Ratio for two consecutive years after the third anniversary of the date Stabilized Occupancy is achieved. If at the end of that period the Operating Reserve is not funded at the level specified in Paragraph 10.B above, the Operating Deficit Guaranty will remain in effect until the General Partner causes the Operating Reserve to be funded at the required level in the manner provided in the Limited Partnership Agreement.

C. **Repurchase**. The Guarantors are required to repurchase the Limited Partner's interest if certain major adverse events occur that threaten the continuing viability of the Project or its ability to generate the projected Tax Credits. The conditions triggering this repurchase obligation and the repurchase amount are described in detail in the Limited Partnership Agreement.

D. **Environmental Indemnification.** The Guarantors will provide an environmental indemnification with regard to the presence of any hazardous substances or the existence of other environmental conditions at the Project Property. Our standard environmental indemnification provisions are contained in the Limited Partnership Agreement.

E. **Guaranty of General Partner's Obligations.** The Guarantors joint and several will guaranty full performance of all of the General Partner's obligations under the Limited Partnership Agreement, including the specific guaranty obligations described under this Paragraph 11. All guaranties provided by the General Partner and Guarantors are joint and several and payments under these guaranties will be made as no-interest loans to the Partnership.

EXHIBIT B

12. Fees to the Management Agent, General Partner and NEF

A. The Management Agent will receive a Property Management Fee in the amount of 6% of gross collected rents. If the Property General Partner is related to the General Partner, the payment of the Property Management Fee will be subordinated to maintain breakeven operation.

B. NEF will be paid an annual, cumulative Asset Management Fee in the amount of $50 per unit annually (increased annually at 3%) from Project Cash Flow.

C. The General Partner and Administrative Limited Partner will receive an annual, non-cumulative Incentive Partnership Management Fee in the amount shown below in Paragraph 13

D. NEF and the Sponsor will be paid a Disposition Fee in the total amount of $100,000 split equally between NEF and the Sponsor out of the net sales proceeds of the sale, transfer or other disposition of the Project or the Limited Partner's Project interest.

13. Distribution of Cash Flow and Sales/Refinancing Proceeds

Projections assume a 30 year depreciation period for the Project. NEF may allocate certain operating expenses to General Partner at its discretion.

Cash Flow: Cash Flow will be distributed as follows:

1) To the Limited Partner to pay any unpaid Tax Credit adjuster amount;
2) To NEF to pay the Asset Management Fees;
3) To the Limited Partner to repay any Limited Partner loans;
4) To Maintain/replenish the Operating Reserve (if applicable);
5) To the Developer to pay any Deferred Developer Fee;
6) To the General Partner/ALP to repay any General Partner loans;
7) To the General Partner/ALP to repay any guaranty advances;
8) To the General Partner/ALP, a non-cumulative Incentive Management Fee equal to 90% of remaining Cash Flow; and
9) The remainder 0.01% to the General Partner/ALP and 99.99% to Limited Partner.

NOTE: For tax purposes, the Limited Partner must receive at least 10% of all cash flow distributions remaining after payment of Item #7 above.

EXHIBIT B

Sale/Refinancing: Any gain upon sale or refinancing will be distributed as follows:

1) To the Limited Partner to pay any unpaid Tax Credit adjuster amount;
2) To the Limited Partner to pay any exit tax liabilities;
3) To NEF to pay any unpaid Asset Management Fee;
4) To the Limited Partner to repay any Limited Partner loans;
5) To the GP/Developer to pay any Deferred Developer Fee;
6) To NEF to pay the Disposition Fee;
7) To the General Partner/ALP to repay any General Partner/ALP loans (other than guaranty advances);
8) To the General Partner/ALP to pay any unpaid Partnership Management Fee;
9) To the General Partner/ALP to repay any guaranty advances;
10) The remainder 90% to the General Partner/ALP and 10% to Limited Partner.

14. Right of First Refusal and Purchase Option

If the General Partner agrees to maintain the property for low-income use. as defined in Section 42 of the Code, for a total period of at least 30 years, the Project may be disposed of as follows:

A. **Right of First Refusal (ROFR)**

If the Sponsor is a 501(c)(3) corporation or governmental entity, it will be granted a right of first refusal to purchase the Project at the end of the Tax Credit Compliance Period, for a price equal to the sum of: (a) all outstanding Limited Partnership debt, including Limited Partner loans, (b) any state, local or federal taxes projected to be imposed on the Limited Partner as a result of the sale, and (c) any unpaid portion of any Credit Adjuster payments due and owing to the Limited Partner. No Disposition Fee will be charged upon a disposition via Right of First Refusal.

B. **Purchase of the Project or Limited Partner's Interest**

At the end of the Tax Credit Compliance Period, the General Partner may elect to purchase the Project or the Limited Partner's interest in the Partnership for a price equal to the greater of: (i) the appraised value of the Project plus any additional amount required to pay off all outstanding principal and interest on any loans made by the Limited Partner to the Partnership, or (ii) a price equal to the sum of: (a) all outstanding Partnership debt, including Limited Partner loans, if the General Partner elects to purchase the Project, or all outstanding principal and interest on any Limited Partner loans, if the General Partner elects to purchase the Limited Partner's interest, (b) any state, local or federal taxes owed by the Limited Partner as a result of the sale, and (c) any unpaid portion of any Credit Adjuster payments due and owing to the Limited Partner. The Disposition Fee shall be paid upon the General Partner's purchase of the Project.

EXHIBIT B

15. Limited Partner Transfers

The Limited Partner will have certain rights to transfer its interest in the Partnership, including the right to withdraw from the Partnership at any time after the Limited Partner has satisfied its obligation to pay Capital Contributions and the right to put its interest to the General Partner upon the expiration of the Tax Credit Compliance Period.

16. Reports

During the term of our investment, the General Partner will provide the following reports: (i) quarterly management and financial reports for the Partnership, (ii) state and federal tax returns, (iii) monthly construction status and lease-up reports, (iv) copies of all construction loan draw requests, (v) annual audited financial statements for the Partnership prepared in accordance with generally accepted accounting principles (GAAP). (vi) annual budget, and (vii) other information regarding significant Partnership operations. The General Partner is required to submit such reports to the Limited Partner within the time frames established by the Limited Partnership Agreement. The fiscal year of the Partnership will be the calendar year unless otherwise specified by us.

17. Limited Partner Expenses

We will charge the Partnership $55,000 for legal fees and other closing costs inclusive of the NEF tax opinion. We may require a third party construction inspector to provide monthly reports to us. If a third party construction inspector is needed, the cost will be added to the Project budget.

18. Model Form Project Limited Partnership Agreement

The Limited Partnership Agreement will be prepared by our attorneys using our current model form agreement. The model form contains a variety of key terms that define the rights and obligations of the parties. This document is updated on a periodic basis in response to comments we receive from investors.

19. Other Items

NEF's obligation under this Letter is contingent upon its determination that the following conditions have been met:

a) a satisfactory site visit;
b) the accuracy and verifiability of the assumptions data provided;
c) partnership agreement documentation acceptable to NEF and its counsel;
d) appropriate and satisfactory due diligence documentation and review;
e) final Investment Review Committee approval;
f) placement of the Project investment with one or more investors on terms acceptable to NEF; and
g) Limited Partnership Closing by the date shown in Paragraph 5 above.

EXHIBIT B

In the event NEF determines, in its sole and reasonable discretion, that any of the foregoing conditions have not been met, NEF may terminate this Letter, upon which this Letter shall be of no further force and effect.

20. Summary

This Letter summarizes the general terms and conditions of our investment which will be further detailed in the Limited Partnership Agreement. If these terms are acceptable to you, please sign and return this Letter to:

Jason Aldridge | Vice President of Originations
NATIONAL EQUITY FUND
Phone (972) 741-5150
jaldridge@nefinc.org

This offer must be accepted by the sponsor by no later than February 19, 2021. If this Letter is not signed by you prior to such date due to changes in market conditions or other assumptions on which this Letter is based, we will extend the date so long as you continue to work with us in good faith to restructure the transaction in a mutually satisfactory manner. We reserve the right to terminate this Letter at any time if we determine that such efforts are not likely to lead to a result reasonably satisfactory to us within a reasonable period of time not to exceed sixty (60) days from the date of this Letter.

By signing this Letter, and in consideration of the cost and expense incurred or to be incurred by us in conducting due diligence documentation and review, the Sponsor/General Partner hereby grants NEF or its affiliate the right to acquire a 99.99% interest in the Partnership and the exclusive right to syndicate the Tax Credits generated by the Project. Our exclusive right to syndicate the tax credits shall continue until the earlier of (i) the date that occurs [one] [two] years from the date of this letter or (ii) the date on which we agree in writing to terminate its exclusive right to syndicate the Tax Credits. Also, by executing this Letter you hereby authorize us to make any credit inquiries that we may deem necessary as part of its underwriting. These credit inquiries may be performed on the General Partner, Sponsor/Developer, Guarantors, or any other entities as determined to be necessary by us.

As next steps, we will perform a site visit and conduct document review and other due diligence activities to verify the information that has been provided and will be provided (including the information described in Exhibit A) and the assumptions contained in the Projections. Our ability to recommend this proposed investment for final internal approval will depend upon a satisfactory outcome to these due diligence activities. Final internal approval requires action by our Investment Review Committee. If the committee grants approval, we will prepare the Limited Partnership Agreement and discuss with you and your attorneys all closing documentation and checklist items. This Investment Review Committee must approve this investment and the closing must occur by the date shown in Paragraph 5 above. We reserve the right to terminate this Letter if we determine that any of the conditions described in this paragraph have not or will not be met in a timely manner.

EXHIBIT B

Upon receipt of this Letter executed by you, and receipt of the items that will be requested under separate cover (summarized in Exhibit A), NEF will begin its due diligence on the Project investment. At your request, we may engage outside counsel to draft documents and conduct legal reviews prior to approval of this transaction by our Investment Review Committee, on the condition that you assume responsibility for payment of our legal fees if the transaction is not approved or does not close due to a change of assumptions incorporated in the Projections or other reasons outside of NEF's control.

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EXHIBIT B

We look forward to working with you and your organization on this important affordable housing project in your community.

Sincerely,

NATIONAL EQUITY FUND, INC.

Jason Aldridge, Vice President

Accepted:

By: Ray Kwiatek, Chief Development Officer

DATE: 2/12/21

Exhibit A - Projected Financial Information

EXHIBIT B

Wells Fargo Bank N.A.
350 East Las Olas Blvd.
19th Floor
MAC Z6074-194
Ft. Lauderdale, FL 33301
PH: 954-712-3687
FAX: 954-712-3690
michael.marra@wellsfargo.com

February 2, 2021

Mr. Ben King
2100 Memorial Redevelopment, L.P.
c/o Columbia Residential
1718 Peachtree Street, NW
Suite 684 South Tower
Atlanta, Georgia 30309

cc. Ray Kuniansky

Re: Letter of Interest - Construction financing for 2100 Memorial, a 197-unit new construction affordable development to be known as 2100 Memorial for seniors in Houston, TX (the "Property").

Dear Mr. King:

You have inquired with Wells Fargo Bank, National Association (the "Bank") regarding possible construction financing for the above-referenced affordable rental housing to be developed by the Developers listed below. The purpose of this letter is to outline some of the preliminary, but not all, of the proposed loan terms. This letter is not a commitment letter and contains no commitment to lend.

The Bank's preliminary analysis with respect to the proposed loan structure described in this letter is not, and must not be construed to be, an evaluation of the project for investment purposes or otherwise.

Based upon a preliminary review of the project data, which included a narrative project description, sources and uses information, a development budget, pro forma and operating cash flow detail, the Bank anticipates that the structure of the proposed loans would include, without limitation, the terms listed below. The proposed loan structure and pricing may change based upon the Bank's analysis of additional information you will provide, or the Bank may elect to decline to make a loan at its sole discretion.

Developer(s): **New Columbia Residential, LLC** (an affiliate of Columbia Residential), **Creekstone Companies** and the **Houston Housing Authority**, as co-developers

Borrower: **2100 Memorial Redevelopment, L.P.** ("Borrower"), a Texas Limited Partnership, with 2100 Memorial Redevelopment GP, LLC, as General Partner (an affiliate of the Houston Housing Authority with a 0.005% ownership interest) and Columbia Memorial, LLC, as Administrative

Limited Partner (an affiliate of New Columbia Residential with a 0.005% ownership interest), with a combined 0.01% ownership interest and an Investor Limited Partner with a 99.99% ownership interest.

Guarantors: Full Completion and Repayment Guaranties from Columbia Residential, LLC, New Columbia Residential, LLC, Affordable Housing Partners, Inc., New Affordable Housing Partners, LLC, Columbia Residential Propety Management Inc., New Columbia Residential Property Management, LLC, SDK Interests II, LLC, 2100 Memorial Redevelopment GP, LLC, as General Partner and Columbia Memorial, LLC, as Administrative General Partner.

In addition to the Guaranties described above, the Bank may require a minimum Liquidity and Tangible Net Worth Covenant in aggregate for all Guarantors.

Collateral: The facility will be secured by a first real estate mortgage, as well as, during the construction period, other instruments including but not limited to an assignment of leases and rents on the subject Property, an assignment of rights to capital contributions, an assignment of all general partner interests in the Borrower, an assignment of the Section 8 contract (if any) and assignments of the borrower's agreements with the general contractor, architect, property manager, and service provider (if applicable).

Ground Lease: The ground lease (if any) shall be a long-term ground lease (75+) years with nominal annual lease payments. Initial capital lease payments are permitting so long as they are included in the construction budget.

Bank will require a leasehold interest in the property and the following Bank Protections to be included in the ground lease:

- Notice and cure rights upon Borrower default
- Right to take an assignment of the Borrower's interest in the Ground Lease upon foreclosure
- Right to obtain a new Ground Lease upon the termination of existing ground lease for any reason including rejection of the ground lease in a bankruptcy proceeding
- Agreement that Ground Lessor will not modify the ground lease without Bank's consent

Purpose: Tax-exempt loan proceeds will be used to fund the construction of the project, which will be developed by the Developer(s). Funds will be fully disbursed at closing.

Rental Set-Aside: 5.1% of the units will serve tenants earning no more than 30% of Area Median Income ("AMI") 15.2% of the units will serve tenants earning no more than 50% of AMI, 60.4% of the units will serve tenants earning no more than 60% of AMI, 9.1% of the units will serve tenants earning no more than 80% of AMI (although not restricted as income averaging units for tax credit purposes) and 10.2% of the units will be at market rate. The "Area Median Income" shall mean the area median income as

determined by the U.S. Department of Housing and Urban Development ("HUD") as adjusted for household size. 39 (19.80%) of the units shall be subject to a 20-year Section 8 HAP contract with rents of $921 for studio units, $1,032 for 1-bedroom units and $1,244 for 2-bedroom units.

Recourse: Full Completion and Repayment Guarantees from Guarantors during the Construction Period. Permanent Loan Facility will be non-recourse except for standard non-recourse carve outs.

Cash Equity: The Bank reserves the right to determine the exact amount of cash equity and pay-in schedule of the equity based on the final structure or the transaction and loan. A minimum of $17,783,521 in Low Income Housing Tax Credits ("LIHTCs") shall be invested into the project as cash equity, with not less than $3,170,005 (17.83%) invested at Partnership closing and a cumulative equity investment of not less than 65.8% on or about the time the project is 100% complete.

Developer Fee: The Developer's Fee will be deferred until after the payoff of the Bank's loan, except for $1,623,730, paid at the construction loan closing. Upon approval of the Bank as provided in the Loan Agreement and Partnership Agreement, so long as the loan is in balance, after final lien free Certificate of Occupancy, receipt of the 2nd equity installment, $1,623,730 of Developer Fee shall be released. Upon Conversion and 8609 the balance of any paid Developer Fee shall be released. As of the date of this letter of interest, it is anticipated that $305,080 of Developer Fee will be deferred. Other than the construction loan closing and completion Developer Fee installments noted above, if any Developer Fee is paid by the tax credit investor limited partner prior to the payoff of the loan, proceeds shall be deposited into a restricted account with Bank and assigned to Bank as additional collateral.

CONSTRUCTION PERIOD LOAN

Construction Loan Facility: Wells Fargo proposes to arrange for a tax-exempt Construction Loan Facility in an amount up to an estimated **$32,000,000** or the lesser of:

1) 80% of the appraised value, based on the stabilized rent-restricted value of the project plus the value of the low-income housing tax credits,

2) 85% of the total development cost of the project, or

3) the amount required to meet the 50% test.

Wells Fargo will provide a tax-exempt Series A loan ("Loan") to the bond issuer ("Governmental Lender"). The proceeds from the Loan to the Governmental Lender will be advanced by the Governmental Lender to the Borrower to pay project costs on draw down basis either directly to the Borrower or through a Fiscal Agent, at the discretion of the Governmental Lender.

Funding Schedule: The Bank notes that terms included herein are based on the information provided by Developer that tax credit equity will repay the Bank on or prior to conversion or according to a schedule agreed to by the Bank.

Term: The maximum term of the loan shall be thirty-six (36) months from the date of loan closing, plus one six-month extension. The extension of the construction loan is contingent upon: payment of an extension fee of 25 bps on the outstanding Construction Loan Facility, the Property having obtained a Certificate of Occupancy and extension of the Permanent Loan Commitment.

Interest Rate: The Construction Period Loan shall bear interest at a rate per annum (computed on the basis of a 360-day year, actual number of days elapsed) equal to, 30-day LIBOR, subject to a LIBOR floor of 50 basis points, plus 195 basis points, (Today's Rate would be 2.45%). It is anticipated that no later than 12/31/2021, LIBOR will cease to be published and the reference rate for this transaction will revert to a fallback rate. Both the fallback rate and the conditions that would give rise to implementation of the fallback rate will be described in detail within the loan documents.

The above Interest Rate (spread and floor quoted, if any) is an indicative rate if the loan were to close as of the date of this letter.

While the Bank will attempt to maintain an Interest Rate that preserves feasibility for the project and for the Bank, the Bank reserves the right until closing to increase the spread over the 30-day LIBOR rate and the floor (if any) to reflect market conditions including the cost of funds.

Interest will be payable monthly out of an interest reserve.

Interest Rate Protection: To hedge the variable interest expense of the Facility, Borrower may acquire an interest rate swap or other swap transaction, provided that the terms, conditions and provider of the swap are acceptable to Wells Fargo, and each party to the swap and each of Borrower's credit support providers satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act and the Commodity Futures Trading Commission ("CFTC") regulations. Any swap with Wells Fargo would require the same collateral, guaranties and other credit support, if any, required for the Facility. Nothing herein is a recommendation, solicitation, commitment or offer for any swap, and Borrower acknowledges that Wells Fargo may be unable under CFTC regulations to recommend or offer Borrower a swap unless Wells Fargo determines the swap would be suitable. If Borrower would like information about swaps, or hedging with Wells Fargo, the Borrower can be referred to Wells Fargo's swap specialists.

Wells Fargo will take an assignment and a security interest in proceeds due to Borrower under the interest rate swap.

Origination Fee: The construction period loan origination fee will be equal to eighty tenths of one percent (0.80%) of the loan amount, subject to a floor of $25,000.

Permanent Loan: A permanent loan acceptable to the Bank, not to exceed $11,700,000 at a rate not to exceed 4.33%, including 15 bps for issuer and third party fees, with a 15 year term, based on a 35 year amortization schedule, from a permanent lender acceptable to the Bank. Citibank is an acceptable permanent lender.

Other Conditions: Subordinated Debt shall be prohibited, unless approved by Lender in its term, payment conditions and any recorded extended use restriction agreements. The Bank acknowledges that there are restrictions in the tax credits provided by Texas Department of Housing and Community Affairs ("TDHCA"), $25,000,000 subordinate City of Houston Disaster Relief Loan and $4,863,962 subordinate FEMA Loan, but has not reviewed or approved the restrictive terms. Subordinated lenders shall be required to execute a subordination and standstill agreement in form and substance approved by Wells Fargo. To the extent that additional restrictions exist associated with subordinate loans, impact fees, or other agreements, Bank review and approval is required.

Financing terms herein assume that any extended use agreement or similar encumbrance affecting the property, by its terms, must terminate upon foreclosure or upon a transfer of the property in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

Replacement Reserves: Ongoing annual Replacement Reserves of $300 per unit, plus applicable annual trending shall be required and will be held by Lender.

Operating Reserves: Borrower shall fund an Operating Reserves of $921,000 (6 months of operating expenses) to be held by Investor Limited Partner or Lender.

GENERAL CONDITIONS FOR CLOSING

Expenses: Borrower will pay for all expenses incurred by the Bank in connection with the loan including, but not limited to, legal fees and expenses, appraisal/survey fees, title insurance premiums and search fees, credit investigation fees, UCC searches, environmental assessment fees, and inspecting architect fees, whether or not the facilities contemplated herein are funded. This obligation will survive the expiration or termination of any approval.

Tax Credits: Bank understands that Borrower has been or will be awarded Low Income Housing Tax Credits. Any financing that would bridge tax credit equity is contingent upon the sale of the tax credits to a purchaser acceptable to the

Bank, equity terms acceptable to the Bank and closing of the tax credit investor partnership prior to or simultaneous with loan closing.

Guarantor Status: Facility is dependent on satisfactory review of the Guarantors' financial position.

Documents: Any loan must contain all the terms and conditions desired by the Bank. The loan documents must be satisfactory to the Bank and the Bank's attorneys at the Bank's sole discretion.

Project Budget: The project budget as provided by Borrower and adjusted by Investor Limited Partner reflects total project costs of $59,652,563 and permanent financing sources that consist of the following:

1) $17,783,521 in Federal LIHTC Equity,

2) $11,700,000 first mortgage permanent mortgage funds,

3) $25,000,000 subordinate loan proceeds from City of Houston Disaster Relief Loan,

4) $4,863,962 subordinate loan proceeds from FEMA Loan, and

5) $305,080 deferred developer fee.

The Bank acknowledges that this project budget is subject to change. Significant changes to the budget that materially affect the project may result in revocation of or changes to the terms and conditions proposed herein.

Appraisal: The Bank will require an appraisal ordered by the Bank, at the Borrower's expense, in form and substance satisfactory to the Bank prior to any funding of the proposed loan. The Bank will require a deposit to order the appraisal for the subject Property.

Environmental: The proposed loan will be contingent upon the Bank's review and satisfaction of a Phase I and Phase II (if applicable) Environmental Report to be submitted by the Borrower to Bank at Borrower's expense.

GC Contract Approval: The Bank reserves the right to review and approve the general contractor and the construction contracts as to form, content, and values. The construction contract shall be a fixed price contract. The total development budget shall include a minimum 5% hard cost contingency for new construction or 10% for acq/rehab.

A Payment & Performance Bond will be required. In lieu of a P&P Bond, the Borrower may deliver a 10% Letter of Credit from a financial institution acceptable to Bank.

Costing: The Bank will require a costing review to be ordered by the Bank, at the Borrower's expense, in form and substance satisfactory to the Bank prior to any funding of the proposed loan.

ADA Compliance: Acknowledgment from an engineer, architect or professional inspector, prior to closing that the project complies with ADA.

Title Insurance: Bank will require an acceptable ALTA extended coverage title policy from an approved insurer and reinsurer in the amount of the loan, together with appropriate endorsements determined after reviewing a preliminary title commitment or other relevant documentation.

Property Manager: Execution of a property management agreement with an affiliate of Developer or a firm experienced with LIHTC projects that is acceptable to the Bank.

The terms contained herein are confidential, and except for disclosure to your officers, employees, and to professional advisors retained by you in connection with this transaction, or as may be required by law, may not be disclosed in whole or in part to any other person or entity without the prior consent of Wells Fargo.

The pricing and structure included herein are based on current market conditions as of the date of this letter. It is contemplated that this financing will be closed by **August 31, 2021**; after said date Bank reserves the right to review and revise the above pricing and structure based on then current market conditions.

This letter does not represent a commitment by the Bank for the proposed financing, nor does it define all the terms and conditions of loan documents, but is a framework upon which a loan request may be submitted. Issuance of a commitment by the Bank is subject to the approval of the loan request under the Bank's internal approval process, which includes, but is not limited to, a review of the Borrower's then current financial condition, and review and approval of all third party reports, in addition to completion of loan documents in form and substance acceptable to the Bank. Borrower is advised to retain this letter for their records.

If you would like to proceed, please countersign below and return a copy of this signed letter to the Bank, along with a non-refundable expense deposit of $10,000, applied to Bank expenses and commitment fees at the time of closing. This letter will no longer be valid if not signed by **February 19, 2021**. Upon your acceptance of the terms and conditions outlined above, the Bank will proceed with the remaining due diligence necessary to obtain full credit approval.

If you should have any questions concerning these terms and conditions, please feel free to call me at (954) 712-3687. We look forward to working with you to provide financing for this project.

Sincerely,
Wells Fargo Bank, National Association

EXHIBIT B

Michael J. Marra
Vice President
Community Lending & Investment

Accepted this 12th day of February 2021:

2100 Memorial Redevelopment, L.P.,
a Texas Limited Partnership

By: Columbia Memorial, LLC, as Administrative Limited Partner,
a Texas Limited Liability Company

By: _____
Name: Ron Kaminsky
Title: Chief Development Officer

EXHIBIT B

Community Capital

February 12, 2021

2100 Memorial Redevelopment, L.P.
c/o Columbia Residential
1718 Peachtree Street NW, Suite 684 – South Tower
Atlanta, GA 30309
Attn: Ben King

Re: Letter of Interest
2100 Memorial Redevelopment, L.P. – Houston, Harris County, Texas

Dear Mr. King:

Citibank, N.A. ("CITI") understands that 2100 Memorial Redevelopment, L.P. ("2100 Memorial") intends to submit an application to the City of Houston for Disaster Relief-17 funding. CITI is interested in providing the related permanent loan for the project (see attached Term Sheet, "Exhibit A").

This letter is not intended to be, and shall not constitute, a commitment to lend, syndicate a financing, underwrite or purchase securities, commit capital, or provide or arrange any portion of the financing for the Project. Such obligations would arise only under separate written agreements acceptable to CITI in its sole discretion. Furthermore, any such commitments would be subject to, among other things, (a) the satisfactory completion of CITI's customary due diligence review; (b) approval by CITI internal committees; (c) the receipt of any necessary governmental, contractual and regulatory consents or approvals in connection with the Project and the related financing; (d) the negotiation and documentation of the financing referred to above, including the terms and conditions of the financing, in form and substance satisfactory to CITI and its counsel; and (e) there not having occurred any disruption of or change in financial, banking or capital market conditions that, in CITI's judgment, could make it inadvisable or impractical to proceed with any portion of the financing of the Project.

Neither CITI nor any of its affiliates shall have any liability (whether direct or indirect, or in contract, tort or otherwise) to 2100 Memorial Redevelopment, L.P., the Project or any other person, claiming through 2100 Memorial Redevelopment, L.P. or the Project, as the case may be, for or in connection with the delivery of this letter.

In connection with this transaction, CITI will be acting solely as a principal and not as your agent, advisor or fiduciary. CITI has not assumed a fiduciary responsibility with respect to this transaction, and nothing in this transaction or in any prior relationship between you and CITI will be deemed to create an advisory, fiduciary or agency relationship between us in respect of this transaction. You should consider carefully whether you would like to engage an independent advisor to represent or otherwise advise you in connection with this transaction, if you have not already done so.

Very truly yours,
CITIBANK, N.A.

Mahesh Aiyer
Authorized Signatory

EXHIBIT B

Encl. - Exhibit A

citi

EXHIBIT A
TERM SHEET

Multifamily Rental Developments with Rent Restrictions
New Construction and/or Substantial Rehabilitation and/or Term Mortgages
Tax-Exempt "Back-to-Back" Loan Structure

2100 Memorial

February 12, 2021

NOTE: This Term Sheet constitutes a brief summary of certain, but not all transaction terms and conditions for discussion purposes only. The summary that follows is subject to credit approval and does not constitute an offer or commitment.

In connection with this Term Sheet, CITI will be acting solely as a principal and not as your agent, advisor or fiduciary. CITI has not assumed a fiduciary responsibility with respect to this Term Sheet, and nothing in this transaction or in any prior relationship between you and CITI will be deemed to create an advisory, fiduciary or agency relationship between us in respect of this Term Sheet. You should consider carefully whether you would like to engage an independent advisor to represent or otherwise advise you in connection with this Term Sheet, if you have not already done so.

This Term Sheet is an integral part of, and establishes terms, conditions and requirements of, a letter of interest February 12, 2021 to which it is annexed.

PRELIMINARY LOAN TERMS

Transaction Summary:	CITIBANK, N.A. ("CITI") proposes to arrange a tax-exempt permanent-only loan to the Issuer (the "Governmental Lender"). The proceeds of the Loan to Governmental Lender shall fund a permanent-only mortgage loan ("Tax-exempt Loan") by Governmental Lender to the Borrower for the Property described below. If required by Governmental Lender, a fiscal agent ("Fiscal Agent") will be appointed and will be responsible for following the terms of the Tax-exempt Loan documents and administering funds held under the Construction Funding Agreement The Tax-exempt Loan will have a Permanent Phase only. Payments during the Permanent Phase will include principal reduction payments as well as interest.
Property:	A to-be-constructed multifamily project containing 197 units located in Houston, TX. The property is commonly referred to as 2100 Memorial ("Property").
Set-Asides:	5% of the units are set aside for families or individuals whose income is no greater than 30% of the Area Median Income (AMI), 15% of the units are set aside for families or individuals whose income is no greater than 50% of AMI, 60% of the units are set aside for families or individuals whose income is no greater than 60% of AMI, and 10% of the units will be unrestricted at market rate. 20% of the units will be covered by a Project Based Section 8 Contract.
Applicant:	2100 Memorial Development, L P

Borrower:	A single asset entity whose manager or general partner is the Applicant or an affiliate of Applicant. Borrower entity, its constituent entities and its operating or partnership agreement must be acceptable to CITI in all respects.
LIHTC Investor/ Syndicator:	The Low Income Housing Tax Credit ("LIHTC") Investor/Syndicator, the upper tier investor(s) and the terms and conditions of the operating or partnership agreement must be acceptable to CITI in all respects including, particularly, the timing and conditions to funding capital contributions.
Guarantor(s):	New Affordable Housing Partners, LLC, New Columbia Residential, LLC, and SDK Interests II. The Guarantor(s)' financial condition(s) must be acceptable to CITI in all respects.
Subordinate Debt:	The sources of subordinate debt and the subordinate loan documents must be acceptable to CITI in all respects. All subordinate debt must fund prior to Loan funding unless CITI approves other arrangements. Subordinate Debt will be subject to CITI's Subordination Agreement, which in addition to other provisions, requires that Subordinate debt only be paid from 75% of available cash flow.
Loan Security:	First lien on land and any improvements, UCC filings for fixtures; assignment of all leases and rents; and, a first priority collateral assignment of all contracts, management agreements, and other agreements and all permits relating to the Property. Ground leases must be subordinate to CITI's lien position unless the fee interest is owned by a government agency to ensure long-term affordability. All income and rent restrictions will be subordinate to the CITI security instrument.
Guarantees:	None, except for industry standard carve outs ("Carve Outs"). Carve Outs include guarantees against fraud, misrepresentation, bankruptcy and environmental issues. The Guarantor will be fully liable for any yield maintenance owed as a result of a failed Conversion as detailed below in the Prepayment and Yield Maintenance section.
Environmental Indemnity:	Borrower and Guarantor(s) will be liable for CITI's standard environmental indemnity.
Closing:	Closing is subject to full satisfaction of CITI's standard due diligence, underwriting and credit approval processes, and the execution and delivery of all required loan documents, delivery of opinions, payment of fees and other customary requirements.
Closing Date (*est.*):	Q2 2021

PERMANENT PHASE

Permanent Phase Loan Amount:	An amount currently estimated to be in the maximum amount of $11,700,000 or such other loan amount supported by CITI's underwriting of the Property at the time of Conversion in accordance with CITI's underwriting requirements including those listed below.
Forward Commitment Term:	36 Months, plus one 6-month extension.
Term:	30 years.
Mandatory Prepayment:	At the end of the 18th year following Closing, CITI, in its sole discretion, will require repayment of the Tax-Exempt Loan in full.

Amortization:	35 year amortization.
Lock-out Period:	From the Conversion Date until the 10th anniversary of the Conversion Date.
Day Count:	Actual/360.
Yield Maintenance Period:	From Closing until 6 months prior to the end of the 18th year following Closing.
Permanent Phase Interest Rate:	A fixed rate equal to the sum of 18 year LIBOR swap index, (which shall have a floor of 0.75%), plus a spread of 2.65%. Currently, the 18 year LIBOR swap index is 1.65% for a current indicative rate of 4.30%. The rate does not include Issuer, Trustee, or miscellaneous third party fees. The rate will be committed at the time of closing of the Construction Phase financing. Pricing is based on current market conditions and is subject to change. If the Conversion to the Permanent Phase does not occur on or before month 36 following Closing, 0.05% will be added to the above quoted rate for each 6 month period past the initial 36 month period in which Conversion occurs.
NOTE ABOUT LIBOR:	As of December 31, 2021, it is anticipated that LIBOR will cease to be available or will no longer be published. CITI reserves the right to move to a new index in advance of the anticipated discontinuance, and any term sheets for CITI transactions not yet closed that reflect the rate prior to discontinuance are subject to change
Funding Conditions/ Conversion to Permanent Phase Requirements:	Requirements for funding of the Permanent Phase Loan Amount include completion of construction and 90% physical occupancy of Project for three consecutive calendar months. CITI will review the Property's net operating income to determine the maximum Permanent Phase Loan Amount based on the Debt Service Coverage and Loan-to-Value noted below.
Fee for Funding Lower Amount or Not Funding:	If the Permanent Phase Loan amount funding is less than 90% of the committed Permanent Phase Loan Amount, the Borrower shall pay the greater of: (i) 1% of the amount below 90%of the Underwritten Permanent Phase Loan Amount of (ii) CITI's standard yield maintenance calculation for that amount. If the Permanent Phase Loan Amount is not funding, the Borrower shall pay the greater of: (i) 2% of the committed Permanent Phase Loan Amount; or (ii) CITI's standard yield maintenance calculation for that amount which obligation will be secured by a deed of trust recorded at the time of Closing.

Conversion to Permanent Phase Requirements: Conversion requirements include completion of construction and 90% physical occupancy of Project for three consecutive calendar months. CITI will review the Property's net operating income to determine the maximum Permanent Phase Loan Amount based on the Debt Service Coverage and Loan-to-Value noted below. For purposes of this Term Sheet, the term "Construction Phase" means the period from the Closing Date through the day prior to the Conversion Date and the term "Permanent Phase" means the period from the Conversion Date (inclusive) through the maturity date (or earlier termination) of the Project's permanent financing.

Debt Service Coverage: A minimum of 1.15 to 1.00

Loan-to-Value: 90% of market value, based on restricted rents and inclusive of value of permanent below market financing (if applicable), assuming project rents on 80% or more of the units are discounted to a level at least 10% below market. Otherwise, 85%.

Other Conversion Requirements: As may be required by Governmental Lender

Replacement Reserve: Upon Conversion, Borrower will be required to fund a Replacement Reserve for each of the first five years following Conversion in a minimum amount of $250/unit/year for new construction projects or, for renovation projects, in an amount determined by a Physical Needs Assessment acceptable to CITI, but in a minimum amount of $300/unit/year. For each successive five year period thereafter until Tax-exempt Loan maturity, the Replacement Reserve level will be determined by a new Physical Needs Assessment acceptable to CITI.

Taxes and Insurance: Commencing upon Conversion, real estate taxes and insurance premiums must be escrowed with the Tax-exempt Loan servicer ("Servicer") on a monthly prorated basis in an amount sufficient to enable the Servicer to pay (at least 30 days before due) all taxes, assessments, insurance premiums or other similar charges affecting the Property.

POTENTIAL EARN-OUT

Permanent Phase Tax-Exempt Earn-Out Amount: CITI will provide an earn-out in an amount not to exceed 10% of the initial Permanent Phase Loan amount, currently estimated to be $1,170,000. The amount of the earn-out will be determined by CITI in its sole discretion based on its underwriting of the NOI at the time of Conversion and Application of CITI's loan sizing parameters. To the extent the Permanent Phase Loan Amounts (including the Permanent Phase Earn-Out Amount) exceeds the Loan-to-Value threshold; CITI will require a new appraisal at the Borrower's expense to support the Permanent Phase Earn-Out Amount.

Earn-Out Interest Rate: The rate on the earn-out will be set at Conversion and will be equal to the applicable LIBOR Swap rate at the time of Conversion plus a spread of 2.65%. When set, the earn-out interest rate cannot be 0.25% or more below the Permanent Phase interest rate. The LIBOR Swap rate will be based on the remaining term of the loan at Conversion, e.g. a ten year LIBOR Swap Rate will be used if there are ten years left on the Permanent Phase Loan.

OTHER

Appraisal, Environmental, Engineering Reviews: An appraisal will be co-engaged with the Construction Lender. A plan and cost review will be co-engaged with the construction lender. Prior to conversion, CITI will commission a post-construction analysis report (including an updated replacement reserve table). CITI may rely upon environmental reports commissioned by Borrower if report is current (within 12 months) and CITI has been provided evidence of acceptable E&O insurance coverage carried by Borrower's environmental consultant and a reliance letter in form acceptable to CITI. Otherwise, CITI will commission its own environmental report. Appraisal, environmental and plan/cost reviews must be acceptable to CITI in all respects.

Property Tax Abatements, Incentives: All documentation related to any tax abatement or tax incentives must be acceptable to CITI in all respects

Rental Subsidy Contract: An acceptable Rental Subsidy Contract is required by CITI prior to closing.

FEES & EXPENSES

Application Fee: $25,000, which amount shall be non-refundable (except as set forth in the "Exclusivity" section of the Preliminary Application, if applicable) and due and payable upon acceptance of a Loan Application. This fee is applicable toward third party reports, loan underwriting and processing (in the minimum amount of $5,000), and CITI's initial legal fees. Applicant is responsible for the payment of all reasonable costs incurred in connection with the underwriting, processing and/or closing of the Tax-exempt Loan (including CITI legal fees).

Origination Fee: A non-refundable Origination Fee equal to 1.00% of the Permanent Phase Loan Amount and 1.00% of the Earn-out Amount, together the ("Origination Fee") shall be earned in full by CITI upon the closing of the Tax-exempt Loan, and is due and payable at that time. The Origination Fee will be applied towards CITI's costs of providing this financing.

CITI Legal Fees (*est*): Estimated fees of CITI's counsel for the initial closing are to be determined and assumes no significant negotiation over CITI's form documents. A portion of the Application Fee will be applied to initial CITI counsel fees. Applicant agrees to make a supplemental deposit to cover CITI's counsel fees once the drafting of legal documentation commences, if requested.

Fees of CITI's counsel for work associated with conversion of the Tax-exempt Loan to the Permanent Phase are to be determined

Course of Construction Inspections (*est*): CITI will require copies of the ongoing monthly inspection reports commissioned by the Construction Lender. There may be a monthly inspection report fee in connection with receiving copies of the Construction Lender's reports.

Delivery Assurance Note:

A Delivery Assurance Note for Yield Maintenance shall be executed and in-place at construction loan closing. The Delivery Assurance Note shall be an amount determined by CITI in accordance with the Yield Maintenance formula that maintains the yield that CITI would have received on the Tax-exempt Loan Amount for the full term of the Tax-exempt Loan. The Delivery Assurance Note will be in the form of a recourse promissory note, which shall be secured by a subordinate mortgage or deed of trust encumbering the Project that will be recorded after the construction loan in lien priority. It is anticipated that the Delivery Assurance Note will be second in lien priority. The Delivery Assurance Note shall be non-refundable, provided that the Delivery Assurance Note shall be released upon the funding of the Tax-exempt Loan, subject to any Yield Maintenance requirements being fully paid.

Conversion Fee and Expenses:

A Conversion fee equal to $10,000 will be charged by CITI. Other expenses, including insurance review, site inspection and loan servicer set-up fees are estimated to be $7,500.

Spread/Rate Lock:

If the Permanent Phase Interest Rate(s) are not locked within 150 days following receipt of a fully executed Loan Application and Application Fee, pricing will be subject to change by CITI in its sole discretion.

Other Costs:

Applicant is responsible for costs of survey, title insurance policy, hazard insurance policy, tax escrow fee and all other normal and customary loan closing expenses.

Term Sheet Expiration Date:

February 26, 2021, unless attached to a signed Preliminary Application letter received by CITI on or before February 26, 2021 along with the Application Fee, in which case 150 days following the date of the Preliminary Application.

2100 Memorial Redevelopment, L.P.
c/o Columbia Residential

Ray Kuniansky Chief Development Officer
2/12/21

EXHIBIT B

The provision of information in this Term Sheet is not based on your individual circumstances and should not be relied upon as an assessment of suitability for you of a particular product or transaction. Even if CITI possesses information as to your objectives in relation to any transaction, series of transactions or trading strategy, this will not be deemed sufficient for any assessment of suitability for you of any transaction, series of transactions or trading strategy.

This Term Sheet is provided for information purposes and is intended for your use only. Except in those jurisdictions where it is impermissible to make such a statement, CITI hereby informs you that this Term Sheet should not be considered as a solicitation or offer to sell or purchase any securities or other financial products. This Term Sheet does not constitute investment advice and does not purport to identify all risks or material considerations which should be considered when undertaking a transaction. CITI makes no recommendation as to the suitability of any of the products or transactions mentioned. Any trading or investment decisions you take are in reliance on your own analysis and judgment and/or that of your advisors and not in reliance on us.

CITI often acts as (i) a market maker; (ii) an issuer of financial instruments and other products; and (iii) trades as principal in many different financial instruments and other products, and can be expected to perform or seek to perform investment banking and other services for the issuer of such financial instruments or other products. The author of this Term Sheet may have discussed the information contained herein with others within or outside CITI and the author and/or such other Citi personnel may have already acted on the basis of this information (including by trading for CITI's proprietary accounts or communicating the information contained herein to other customers of CITI). CITI, CITI's personnel (including those with whom the author may have consulted in the preparation of this Term Sheet), and other customers of CITI may be long or short the financial instruments or other products referred to in this Term Sheet, may have acquired such positions at prices and market conditions that are no longer available, and may have interests different from or adverse to your interests.

CITI is required to obtain, verify and record certain information that identifies each entity that enters into a formal business relationship with CITI. CITI will ask for your complete name, street address, and taxpayer ID number. CITI may also request corporate formation documents, or other forms of identification, to verify information provided.

Although Citibank, N.A. (together with its subsidiaries and branches worldwide, "Citibank") is an affiliate of CITI, you should be aware that none of the financial instruments or other products mentioned in this term sheet (unless expressly stated otherwise) are (i) insured by the Federal Deposit Insurance Corporation or any other governmental authority, or (ii) deposits or other obligations of, or guaranteed by, Citibank or any other insured depository institution.

IRS Circular 230 Disclosure: CITI and its employees are not in the business of providing, and do not provide, tax or legal advice to any taxpayer outside of CITI. Any statements in this term sheet regarding tax matters were not intended or written to be used, and cannot be used or relied upon, by any taxpayer for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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EXHIBIT C

Preliminary Construction Budget

SUMMARY SOURCES AND USES OF FUNDS

Describe all sources of funds and total uses of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Participants). Applicants must describe the financing plan for the Development. This must include: (a) any non-traditional financing arrangements; (b) the use of funds with respect to the

Enter all of the *Permanent Period Sources* necessary to complete the project in the Yellow highlighted area below.

Source #	Funding Description	Amount	Interest Rate	Amortization	Term	Timing of contribution	Source of Financing	Lien Position	Status	Payment Obligation
1	**Request from HCDD**	$ 25,000,000	1.00%	0	40	**At closing**	HCDD	2nd	Pending	Soft Debt
2	Conventional Loan	$ 11,200,000	4.86%	35	15	**At conversion**	TBD	1st	Committed	Hard Debt
3	LIHTC Syndication Proceeds	$ 17,783,521				**At conversion**	TBD		Committed	Equity
4	Historic Tax Credit Syndication Proceeds									
5	Other Federal Loan or Grant (non HCDD)	$ 5,269,292				**At conversion**	FEMA/HHA Conduit	3rd	Pending	Soft Debt
7	Private Loan or Grant									
8	Cash Equity									
9	In-Kind Equity/Deferred Developer Fee	$ 2,546,387	8.00%							
10	Other (specify):									
11	Other (specify):									
12	Other (specify):									
TOTAL SOURCES OF FUNDS		$ 61,799,200								
Use #										
1	Acquisition	$ 4,913,962								
2	Development Costs	$ (56,885,238)								
TOTAL USES OF FUNDS		$ 61,799,200								
	HCDD CDBG DR Request	$ 25,000,000								
	Percentage of Total Uses	40%								

Enter all information of any interim *Construction Period Sources* that will not be included as a Permanent Period Source

Source #	Funding Description	Amount	Interest Rate	Amor-tization	Term	Timing of contribution	Source of Financing	Lien Position	Status	Payment Obligation
1	Conventional Loan	$ 30,000,000	2.95%	i/o	36 month	**During construction**	TBD	1st	Committed	Hard Debt
2	LIHTC Syndication Proceeds	$ 3,170,005				**At closing**	TBD		Committed	Equity
3	Historic Tax Credit Syndication Proceeds									
4	Other Federal Loan or Grant (non HCDD)								Pending	Grant
5	Private Loan or Grant									
6	Cash Equity									
7	In-Kind Equity/Deferred Developer Fee	$ 5,550,924								
8	Other (specify): HCCD Funds	$ 23,078,271				**At closing**	HCCD	2nd	Pending	Grant
9	Other (specify):									
10	Other (specify):									
TOTAL SOURCES OF FUNDS		**$ 61,799,200.00**								

EXHIBIT C

EXHIBIT D

Scope of Work

2100 Memorial
Houston, Texas

Project Team

Owner:	Houston Housing Authority 2640 Fountain View Dr. Houston, Texas 77057 P: (713)-260-0600
Developer:	2100 Memorial Redevelopment 1718 Peachtree St. NW, Suite 684, South Tower Atlanta, Georgia 30309 P: (404)-874-5000
Architect:	JHP ARCHITECTURE 8340 Meadow Road, Suite 150 Dallas, Texas 75231 P: (214)-363-5687 F: (214)-363-9563
Structural Engineer:	Innovative Structural Consultants, LLC. 11000 Corporate Centre Dr. Ste 100 Houston, TX 77041 P: (832) 767-2251
MEP Engineer:	PHA Consulting Engineers, Inc. 1101 E. Arapaho Road Suite 150 Richardson, Texas 75081 P: (972) 235-2192 F: (972) 235-4604

DIRECT CONSULTANTS TO OWNER

Civil Engineer:	Kimley-Horn & Associates, Inc, 13455 Noel Road Two Galleria Office Tower Suite 700, Dallas, TX 75240 P: (972) 770-1300
Landscape:	Stithco 2255 Cumberland Pkwy, Suite 1965 Atlanta, GA 30339 P: (770) 527-4288
Contractor:	Block Company 4545 Post Oak Place Dr., Suite 150 Houston, TX 77027 (O) 832-538-1220 (C) 225.279.1925 (F) 713.621.8079
Interior:	Holt Design 18 East Andrew Drive, NW Atlanta, Georgia 30305 (O) 404-351-5682 (F) 404-704-0773
Accessibility:	Pete Skarzenski Consulting 7681 W. Highland Road Red Oak, Texas 75154 (O) 214-886-3063
Sustainability:	SK Collaboative 333 Adams Street Decatur, Georgia 30030 (O) 404-485-4620
Sound:	Apreggio LLC 1947 Aspen Dr, NE Atlanta, Georgia 30345 (O) 404-216-7714 (F) 404-806-6104



EXHIBIT D

Permit Set
JUly 24th, 2020

COVER SHEET

JHP

07.24.2020

2100 Memorial
Houston, Texas

A001

Architectural

Permit Set	07.24.2020	A001	COVER SHEET
Permit Set	07.24.2020	A002	SHEET INDEX
Permit Set	07.24.2020	A003	SHEET INDEX
Permit Set	07.24.2020	A101	ARCHITECTURAL SITE PLAN
Permit Set	07.24.2020	A110	PROJECT TABULATION
Permit Set	07.24.2020	A111	CODE
Permit Set	07.24.2020	A112	WALL AND FLOOR ASSEMBLY AND SCHEDULE
Permit Set	07.24.2020	A113	EGRESS_LIFE SAFETY PLAN
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Issue	Date	Description

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SHEET INDEX

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07.24.2020

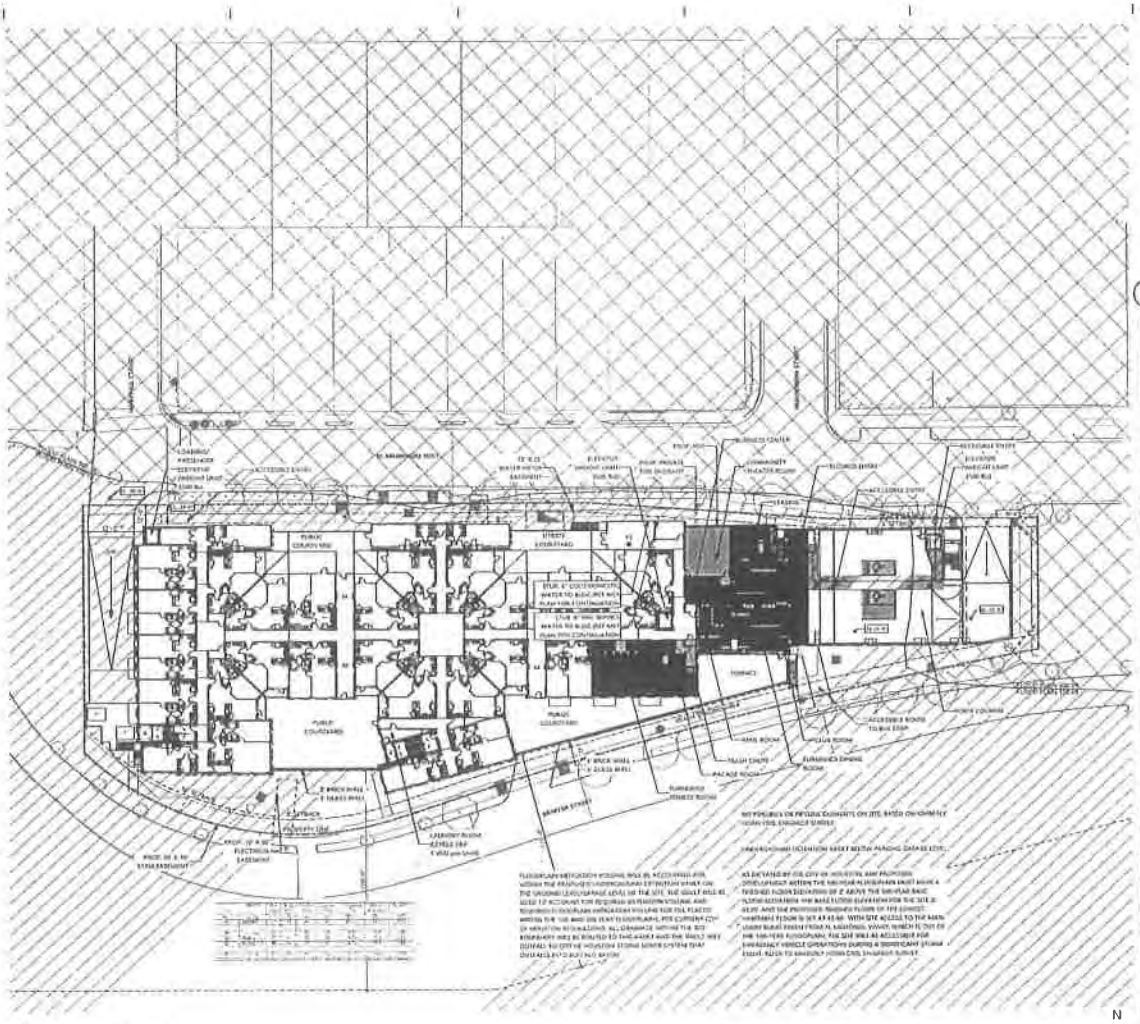
2100 Memorial
Houston, Texas

Project Number: 2010017
Drawn by: [illegible]
Issue for: Permit Set 07.24.20

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Mark	Issue/Revision	Date

A003



25 Architectural Site Plan
Scale: 1" = 20'

1 REFER TO OWNER CONSULTANTS CIVIL DRAWINGS PREPARED BY KIMLEY-HORN ENGINEERS FOR GRADING DIMENSIONAL CONTROL, UTILITIES, PAVING SPECIFICATIONS, AND PARKING QUANTITIES / LAYOUT DETAILS.

2 REFER TO OWNER GEOTECHNICAL CONSULTANTS FOR SOIL PREP REQUIREMENTS OF SUBGRADE

3 REFER TO OWNER CONSULTANTS LANDSCAPE ARCHITECTS DRAWINGS FOR ALL INFORMATION RELATING TO POOL LAYOUT AND DETAILS, SIDEWALKS, FENCING, PLANTING AND SCREENING AREAS.

INDICATES ACCESSIBLE PATH

INDICATES TRANSFORMER LOCATION

INDICATES ACCESSIBLE PARKING VERIFY WITH CIVIL DRAWINGS FOR CLEARLY MARKING

INDICATES PROPERTY LINE

INDICATES ELECTRICAL METER LOCATION, SEE MEP

INDICATES SPRINKLER LOCATION

INDICATES LEASING AND AMENITY AREAS

INDICATES 100 YEAR FLOOD PLAIN

INDICATES 500 YEAR FLOOD PLAIN

12 Site Plan Notes and Legend
Scale: 1" = 40'

PROJECT DATA

Units:	197 Units
zero bedrooms:	39 Units
one bedrooms:	177 Units
two bedrooms:	20 Units
Leasing/Amenity:	5,520 S.F.
Parking Provided:	
Garage:	110 spaces
Porte Cochere Parking:	3 spaces
Total:	313 spaces - (12 HC spaces) (with approved reduction variance)
Site Area:	1.56 Acres
Density:	126.2 Units/Acre

SITE AMENITIES

1. Porte Cochere
2. 24/7 Security System
3. Secured Entry
4. Furnished Fitness Center
5. Community Laundry Room
6. Business Center
7. Club Room
8. Community Dinning Room
9. Community Theater Room

BUILDING DATA

Totals:	
Building Gross S.F.	227,652 S.F.
Unit Net S.F.	145,581 S.F.
Garage Level S.F.	47,065 S.F.
Leasing/Community	5,520 S.F.
Porte Chochere	4,840 S.F.
Trash	253 S.F.
Utility	1,205 S.F.
Corridor	21,871 S.F.
Laundry	560 S.F.



30 Vicinity Map
Scale: 1" = 40'

N

ARCHITECTURAL SITE PLAN

EXHIBIT D

JHP

JHP Architecture / Urban Design
3242 Maple Avenue Suite 150
Dallas, Texas 75201
Telephone 214-363-5687
Fax 214-363-9583

07.24.2020

2100 Memorial
Houston, Texas

Project Number: 20.0057
Drawn By: DHough
Issued For:
Revised Set: 07.24.20

Date	Issue/Items	Init.

A101

EXHIBIT E

Construction Schedule.

ID	Task Mode	Task Name	Duration	Start	Finish	Resource Names
1		JOB DURATION SUMMAF	175 days	Mon 3/15/21	Fri 11/12/21	
2		Mobilization	1 day	Mon 3/15/21	Mon 3/15/21	
3		**Asbestos Abatement**	**85 days**	**Tue 3/16/21**	**Mon 7/12/21**	
4		1st Floor	10 days	Tue 3/16/21	Mon 3/29/21	
5		13th Floor	10 days	Tue 3/23/21	Mon 4/5/21	
6		12th Floor	10 days	Wed 3/31/21	Tue 4/13/21	
7		11th Floor	10 days	Thu 4/8/21	Wed 4/21/21	
8		10th Floor	10 days	Fri 4/16/21	Thu 4/29/21	
9		9th Floor	10 days	Mon 4/26/21	Fri 5/7/21	
10		8th Floor	10 days	Tue 5/4/21	Mon 5/17/21	
11		7th Floor	10 days	Wed 5/12/21	Tue 5/25/21	
12		6th Floor	10 days	Thu 5/20/21	Wed 6/2/21	
13		5th Floor	10 days	Fri 5/28/21	Thu 6/10/21	
14		4th Floor	10 days	Mon 6/7/21	Fri 6/18/21	
15		3rd Floor	10 days	Tue 6/15/21	Mon 6/28/21	
16		2nd Floor	10 days	Wed 6/23/21	Tue 7/6/21	
17		Complete Air Monitori	4 days	Wed 7/7/21	Mon 7/12/21	
18		**Demolition**	**141 days**	**Fri 4/16/21**	**Fri 10/29/21**	
19		Interior Demo	40 days	Fri 4/16/21	Thu 6/10/21	
20		Garage Demo Top Floc	25 days	Tue 6/8/21	Mon 7/12/21	
21		Building Demo	75 days	Fri 6/11/21	Thu 9/23/21	
22		Cutoff Piers	26 days	Fri 9/24/21	Fri 10/29/21	
23		**Well Point System**	**10 days**	**Fri 9/24/21**	**Thu 10/7/21**	
24		**Sheet piling installation**	**10 days**	**Fri 9/24/21**	**Thu 10/7/21**	
25		**Earthwork**	**20 days**	**Mon 10/18/21**	**Fri 11/12/21**	

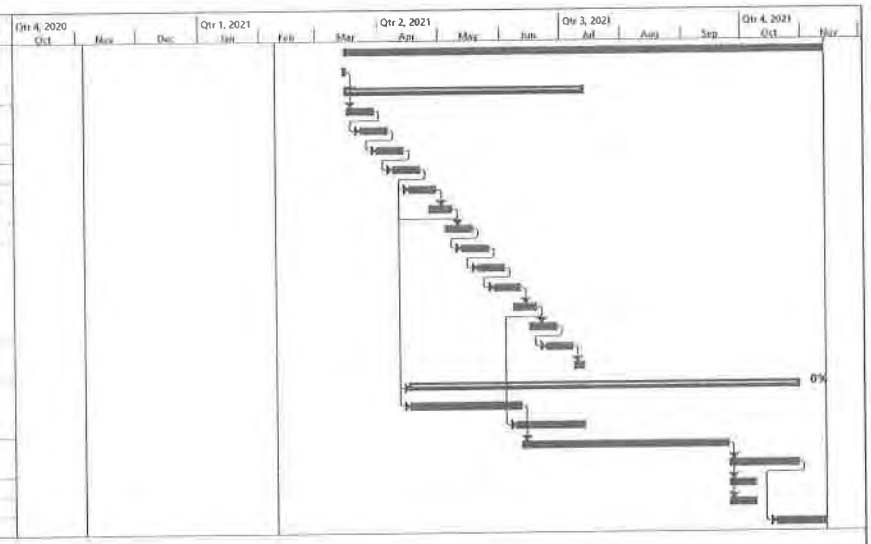


EXHIBIT E

Project: 3-15-2021 Start DEMO
Date: Tue 2/9/21

11-15-21 Start New Preliminary Construction

BLOCK COMPANIES

ID	Task Mode	Task Name	Duration	Start	Finish
1		**Project**	**501 days**	**Mon 11/15/21**	**Mon 10/16/23**
2		**Site Work**	**182 days**	**Mon 11/15/21**	**Tue 7/26/22**
3		Underground	21 days	Mon 11/15/21	Mon 12/13/21
4		Grading	23 days	Tue 12/14/21	Thu 1/13/22
5		Geopiers	14 days	Fri 1/14/22	Wed 2/2/22
6		Paving	21 days	Tue 6/28/22	Tue 7/26/22
7		Vault	15 days	Tue 1/25/22	Mon 2/14/22
8		Garage	53 days	Thu 2/3/22	Mon 4/18/22
9		Podium	50 days	Tue 4/19/22	Mon 6/27/22
10		**Framing**	**164 days**	**Tue 6/28/22**	**Fri 2/10/23**
11		Floor 1	80 days	Tue 6/28/22	Mon 10/17/22
12		Floor 2	80 days	Fri 7/22/22	Thu 11/10/22
13		Floor 3	80 days	Tue 8/23/22	Mon 12/12/22
14		Floor 4	80 days	Fri 9/23/22	Thu 1/12/23
15		Floor 5	80 days	Mon 10/24/22	Fri 2/10/23
16		**Turn Sequencing**	**161 days**	**Mon 2/13/23**	**Mon 9/25/23**
17		**Floor 1**	**81 days**	**Mon 2/13/23**	**Mon 6/5/23**
18		**Floor 2**	**80 days**	**Tue 3/14/23**	**Mon 7/3/23**
19		**Floor 3**	**80 days**	**Tue 4/11/23**	**Mon 7/31/23**
20		**Floor 4**	**80 days**	**Tue 5/9/23**	**Mon 8/28/23**
21		**Floor 5**	**80 days**	**Tue 6/6/23**	**Mon 9/25/23**
22		**Final/ Landscaping**	**30 days**	**Tue 9/5/23**	**Mon 10/16/23**

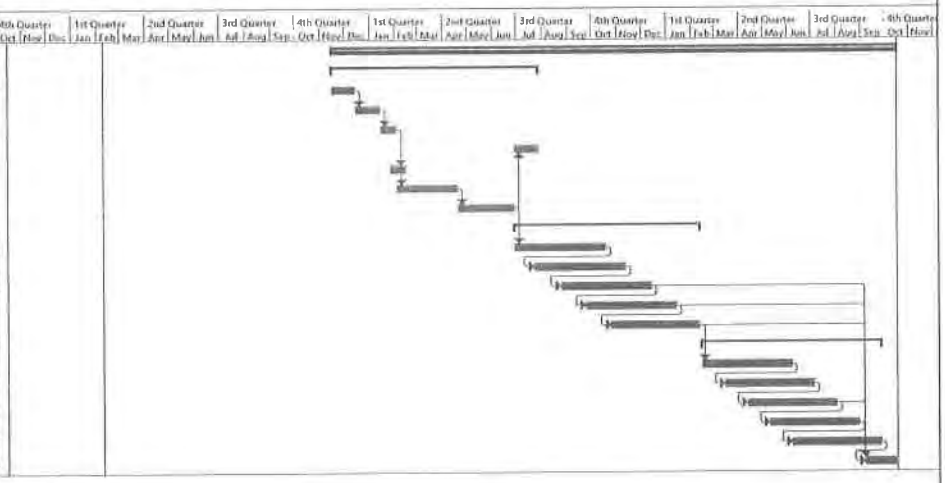


EXHIBIT E

Project: 11-15-21 Start New Pre
Date: Tue 2/9/21

Task	Project Summary	Manual Task	Start-only	Deadline	
Split	Inactive Task	Duration-only	Finish-only	Progress	
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress	
Summary	Inactive Summary	Manual Summary	External Milestone		

ATTACHMENTS TO LOAN AGREEMENT

A. City's Restrictive Covenants

B. Borrowers' Note

C-1. Fee Deed of Trust

C-2. Leasehold Deed of Trust

D. Financing Statements

E. Collateral Note

F. Collateral Assignment (Owner Loan)

G. Construction Completion Guaranty

H. Declaration of Subordination

I. Intercreditor Agreement

J. Assignment of Demolition Contract and Related Contracts

K. Assignment of Property Management Agreement

L. Assignment of Architect's Contract, Plans and Specifications, and Consent

M. Assignment of Construction Contract

M-2. Assignment of Construction Contract (Prime Subcontract)

N. Environmental Indemnity Agreement

O. Form of the Performance Bond, Maintenance Bond, and Payment Bond

P. Owner Loan Agreement

Q. Assignment of Engineer's Contract

R. Subordination, Nondisturbance and Attornment Agreement

S. Declaration of Subordination

ATTACHMENT A
TO LOAN AGREEMENT

RESTRICTIVE COVENANTS

RESTRICTIVE COVENANTS WITH JOINDER BY LANDLORD AND FEE OWNER

THESE RESTRICTIVE COVENANTS ("Declaration") are executed this _____ day of _____, 2021, by **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership ("Owner"); and joined herein by the Landlord and Fee Owner of the Project as described below.

RECITALS

Owner has a leasehold interest in that certain land described on **EXHIBIT A** attached hereto and incorporated herein by reference, together with title to any improvements situated thereon or to be constructed thereon, located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 (said land and improvements being hereinafter collectively referred to as the "Property" or the "Project").

Pursuant to a certain Loan Agreement ("City Loan Agreement") by and between the City of Houston ("City"), Owner and **APV REDEVELOPMENT CORPORATION** ("Borrower" and/or "Landlord and Fee Owner") effective as of _____, 2021, the Owner has agreed to comply with certain occupancy and rent restrictions on the Property for the Affordability Period (as defined herein), and, in consideration of the mutual benefits to the City, Owner and Borrower set out in the City Loan Agreement, Owner has agreed to execute this Declaration to further evidence its agreement to comply with such restrictions.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 General. Capitalized terms used in this Declaration shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Declaration.

a. Affordability Period shall mean the period, which commences upon Project Completion, as defined in the City Loan Agreement, during which all Designated Units in the Project must remain affordable (in accordance with the provisions of Section 3.1 hereof) without regard to the term of the City Loan Agreement or transfer of ownership of the Project (the "City Affordability Requirements"). The Affordability Period for the Project covered by this Declaration shall be forty (40) years from Project Completion and may be extended as provided In the City Loan Agreement. The Affordability Period includes a twenty (20) year HUD required affordability period as set forth in 83 Fed. Reg. 5844 and 83 Fed. Reg. 40314 (the "HUD Affordability Requirements"), in addition to a supplemental twenty (20) year affordability period required by the City. While the Owner's obligation to comply with the HUD Affordability Requirements and related obligations shall end at the close of the initial twenty (20) year affordability period, the Owner shall be required to comply with the City Affordability Requirements for the forty (40) years, as maybe extended, in accordance with this Declaration.

b. City is defined in the preamble to this Declaration.

c. City Loan shall mean the loan made by the City to Borrower in the original principal amount of $25,000,000.00, the proceeds of which were utilized by Borrower to make the Owner Loan to Owner.

d. City Loan Agreement shall mean that certain loan agreement by and between the City, Owner and Borrower, which governs the City Loan.

e. City Loan Documents shall mean all of the documents executed by Borrower and Owner that govern, secure, and/or evidence the City Loan, including without limitation, the City Loan Agreement and this Declaration.

f. Designated Unit(s) shall mean those units in the Project which have been designated by the Owner and approved by the Director as subject to all occupancy, rent and affordability requirements contained in the City Loan Agreement and this Declaration. The Designated Units for the Project covered by this Agreement shall consist of One Hundred (100) Project units, as more particularly described in Article III hereof, and which may "float" within the Project.

g. Director shall mean the Director of the City's Housing and Community Development Department or any other person that the Director may designate to monitor compliance with this Declaration.

h. Float means that the location of the Designated Units may vary within the Project. The income eligible tenants must occupy the Designated Units. If at any time during the Affordability Period the income of the tenant household increases above the threshold eligible area median income level for which the Designated Unit has been designated, then Owner must substitute said unit with the next available comparable unit and house a household whose income is consistent with the area median income for the Designated Unit in which the tenant household became over-income.

i. GLO means the General Land Office of the State of Texas.

j. Ground Lease means that certain Ground Lease between Owner, as tenant, and the Houston Housing Authority as landlord, covering the Project.

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

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

m. LMI Persons shall mean households whose annual incomes do not exceed eighty (80%) percent of the area median income, as determined by HUD with adjustments for family size.

n. Owner is defined in the preamble to this Declaration.

o. Owner Loan means the loan made by Borrower to Owner with the proceeds of the City Loan for the purposes set forth in the City Loan Agreement.

p. Owner Loan Documents shall mean all of the documents executed by Owner that govern, secure, and/or evidence the Owner Loan.

q. Project shall mean the land described in **EXHIBIT A** together with all buildings and other improvements located thereon. Project shall also include all personal property of the Owner located on, incorporated into, or used in connection with the land and improvements, including without limitation, all appliances, air conditioning, heating, ventilation, plumbing and electrical fixtures and equipment.

r. Regulations mean all federal regulations applicable to the Project, including, without limitation, any federal or state regulations related to any loans or grants made pursuant to or in connection with the HUD Community Development Block Grant Disaster Recovery program, as amended from time to time as administered by the GLO.

Section 1.2 Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural, and the masculine shall include the feminine or neuter and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Declaration their proper meanings.

ARTICLE II

USE AND OCCUPANCY OF THE PROPERTY

Section 2.1 Use and Occupancy of the Property. During the Affordability Period, Owner will maintain the Designated Units located at the Property as multi-family rental housing for qualified LMI Persons and will rent or hold available for rental One hundred (100) Designated Units on a continuous basis.

a. During the Affordability Period, Owner will make continuously available for occupancy each and every Designated Unit in the Project as provided in Section 3.1 below.

b. The determination of whether the income of a family or individual occupying or seeking to occupy a Designated Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Designated Unit. Thereafter, such determinations shall be made at least annually on the basis of an examination or reexamination of the current income of the family or individual.

ARTICLE III

RENT

Section 3.1 Designated Units; Compliance With Affordability Requirements.

a. The Director has determined that the number of Designated Units for the Project covered by this Agreement shall consist of 100 units, being at least fifty-one percent (51%) of the 197 total residential units in the Project, the location of which may float during the Affordability Period.

b. With respect to the Designated Units, Owner shall comply with the following affordability requirements:

(1) Each of the Designated Units shall be rented or be available for rent only to the City's LMI Persons, being those households whose gross income does not exceed eighty percent (80%) of the Area Median Income ("AMI"), as determined by HUD.

(2) Designated Units shall be rent restricted based upon the following criteria:

a. 10 of the Designated Units shall be restricted to households at rents that do not exceed thirty percent (30%) of AMI.

b. 20 of the Designated Units shall be restricted to households at rents that do not exceed fifty percent (50%) of AMI.

c. 70 of the Designated Units shall be restricted to households at rents that do not exceed sixty percent (60%) of AMI.

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

(4) The location of the Designated Units shall "float" within the Project. No later than ninety (90) days prior to the initiation of rental activities at the Project, Owner shall contact the Director to establish a procedure for identifying the initial Designated Units to be occupied by qualified tenants and a procedure for identifying the floating Designated Units on a periodic basis thereafter.

c. The Owner will not refuse to lease a Designated Unit to a recipient of federal housing assistance or to the holder of a document evidencing participation in a tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of participation, rental voucher, or comparable tenant-based assistance document (unless such rental is in conflict with other applicable federal or state requirements.

ARTICLE IV

ADMINISTRATION

Section 4.1 Tenant Lease Requirements. The Owner shall enter into a lease agreement (in the form approved by the Director) with each new or renewal tenant ("Tenant") of the Project's Designated Units. The term of each lease shall not be less than one (1) year unless the Owner and the Tenant mutually agree otherwise. No lease of any Designated Unit may contain any of the following provisions:

a. An agreement by the Tenant to be sued, to admit guilt or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

b. An agreement by the Tenant that the Owner may take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties. This provision does not apply to an agreement by the Tenant concerning disposition of personal property remaining in a housing unit in the Project after the Tenant has moved out of a unit. The Owner may dispose of this personal property in accordance with applicable state law;

c. An agreement by the Tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

d. An agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

e. An agreement by Tenant that the Owner may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or prior to a court decision regarding the rights of the parties;

f. An agreement by the Tenant to waive any right to a trial by jury;

g. An agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; or

h. An agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.

Section 4.2 Limitations on Termination of Leases. Owner shall not terminate any tenancy or refuse to renew the lease of any Tenant in the Project except for one of the following reasons: (a) violation of the terms and conditions of the lease; (b) violation of applicable federal, state or local law; (c) if the Project is a transitional housing facility, for completion of the transitional housing tenancy period established by mutual agreement of the Owner and the City; or (d) other good cause. Any termination or refusal to renew must be preceded by the Owner providing the affected Tenant with not less than thirty (30) days prior written notice specifying the grounds for such termination or refusal to renew.

Section 4.3 [reserved]

Section 4.4 Annual Reevaluation of Rents. For purposes of monitoring compliance with the affordability requirements of Section 3.1 above, Owner shall, prior to the occupancy of any Tenant in a Designated Unit and thereafter annually, submit to the City for approval, the rents proposed by the Owner for the coming year as well as the monthly allowances proposed by the Owner for the coming year for utilities and services to be paid by the Tenant. In connection with the Owner's annual submittal of proposed rents, the Owner shall re-examine the income of each Tenant household living in a Designated Unit. The maximum monthly rent must be recalculated by the Owner in accordance with the requirements of Section 3.1 above and reviewed and approved by the City. Any increase in rents for Designated Units is subject to the provisions of the leases in any event, and the Owner must provide Tenants not less than thirty (30) days prior written notice before implementing any increase in rents.

Section 4.5 Maintenance of Project. Owner must maintain the Project in compliance with (i) the City's Minimum Property Standards as defined in the City Loan Agreement and (ii) all applicable, local codes, rehabilitation standards, ordinances and zoning ordinances (including without limitation, the City's Building, Housing and Fire Codes).

Section 4.6 Maintenance of Documents. All tenant lists, applications, leases, waiting lists, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the City, GLO or other federal agency.

Section 4.7 Compliance Review. The City or its designee will monitor Owner's compliance with the requirements of this Declaration. In conducting its compliance review the City will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring and audit reports.

Section 4.8 Releases. Upon the expiration of the Affordability Period as provided in Section 1.1(a) hereof, Owner shall request that the City execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Declaration.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF OWNER

Section 5.1 Representations and Warranties. Owner represents and warrants to the City that:

a. Valid Execution. Owner has validly executed this Declaration and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity:

(i) to enter into this Declaration;

(ii) to carry out Owner's obligations as described in this Declaration; and

(iii) to assume responsibility for compliance with all applicable local, state and federal rules and regulations, including, without limitation, the Regulations.

b. No Conflict or Contractual Violation. To the best of Owner's knowledge, the making of this Declaration and Owner's obligations hereunder:

(i) will not violate any contractual covenants or restrictions (A) between Owner and any third party or (B) affecting the Property;

(ii) will not conflict with any of the instruments that create or establish Owner's authority;

(iii) will not conflict with any applicable public or private restrictions;

(iv) do not require any consent or approval of any individual or entity which has not already been obtained; and

(v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

c. No Litigation. No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

d. No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or relief for debtors.

Section 5.2 **INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, GLO AND HUD FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE CITY, GLO OR HUD AS A RESULT OF ANY MATERIAL INACCURACY IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1.**

ARTICLE VI

ENFORCEMENT AND REMEDIES

Section 6.1 Remedies of the City.

a. A default under this Declaration or the City Loan Agreement, shall constitute a default under the City Loan and the Owner Loan and shall entitle the City to exercise all of its rights and remedies under the City Loan Documents and the Owner Loan Documents which were collaterally assigned to the City. The City may pursue collection on the Owner Loan as part of the collateral for the City Loan. The rights set forth in this Section 6.1 are in addition to any rights the City may have under the City Loan Documents, at law or in equity. In the event of a default hereunder, Owner shall have the cure rights provided it under Section 10.1.2 of the Loan Agreement.

b. This Declaration shall be enforceable by actions at law or in equity including, without limitation, actions for specific performance by the City of Houston, its successors and assigns and/or one or more third-party beneficiaries. For the purpose of this Restrictive Covenant, a third-party beneficiary shall be any member of a Low-Income Family meeting the eligibility requirements for a Designated Unit under Section 3.1 of this Declaration.

c. Each right, power and remedy of the City provided for in this Declaration now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Declaration or

now or hereafter existing at law or in equity or by statute or otherwise and the exercise or beginning of the exercise by the City of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City of any or all such other rights, powers or remedies.

d. Owner shall be fully and personally liable and subject to legal action to the full extent of the losses of the City caused by (a) misappropriation of insurance proceeds; (b) misappropriation of proceeds from condemnation or a conveyance in lieu of condemnation; (c) misappropriation of tenant security deposits or other refundable deposits of tenants; (d) misappropriation of rents and other payments received from leases after an Event of Default; (e) waste or damage to the Project as a result of the intentional misconduct or gross negligence of Owner; (f) for all obligations and indemnities of Owner and Borrower under the City Loan Documents relating to hazardous or toxic substances or compliance with environmental laws; (g) for all obligations of Owner under the Owner Loan and the documents evidencing same which have been collaterally assigned to the City; and (h) for fraud or material intentional misrepresentation by Owner.

e. The tax credit investor limited partner of Owner shall have the right, but not the obligation, to cure any and all defaults caused by Owner within the same notice and cure periods as Owner and such cure shall be accepted by the City as if it was tendered by Borrower.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Amendments. This Declaration may not be amended, modified or rescinded except pursuant to written instrument executed by Owner and approved by the City.

Section 7.2 Notices. All notices required or permitted to be given under this Declaration must be in writing and will be deemed to have been duly given if delivered personally or three (3) days after mailed postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

If mailed or delivered to the City:

CITY OF HOUSTON
Housing & Community
Development Department
2100 Travis Street, 9th Floor
Houston, TX 77002
Attention: Director

If mailed or delivered to Owner:

2100 MEMORIAL REDEVELOPMENT, LP
c/o APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057

And

NEF Assignment Corporation

10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attn: General Counsel

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3 Governing Law and Venue. This Declaration shall be construed and interpreted in accordance with the laws of the City, the State of Texas, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue shall be proper for any dispute with respect to this Declaration in the United States District Court for the Southern District of Texas or the state circuit court sitting in Harris County, Texas.

Section 7.4 Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.5 Binding Effect; Covenants Running with the Land. During the Affordability Period, this Declaration and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the City and its successors and shall pass to and be binding upon Owner's assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Declaration and the covenants, reservations, et al., shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interest; provided, however, that upon expiration of the Affordability Period this Declaration and said covenants, reservations and restrictions shall expire. During the Affordability Period, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Declaration to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the City to enforce this Declaration.

Section 7.6 Counterparts. This Declaration and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy.

Section 7.7 Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Declaration as set forth in the text.

Section 7.8 Joinder by Landlord and Fee Owner. The Landlord and Fee Owner, as owner of the fee estate and landlord under the ground lease in the Project, has joined herein to evidence its

consent to these Restrictive Covenants and its agreement for the Restrictive Covenants to bind the Project, the fee estate, and the leasehold estate created by the Ground Lease (both landlord and tenant's interests) and run with the land.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned have executed this Declaration to be effective as of the _____ day of _____, 2021.

OWNER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation, its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation and sole member of 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company and sole general partner of **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership, on behalf of such corporation, company, and limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____, 2021.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My Commission Expires:____

CONSENTED TO AND APPROVED:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation on behalf of such corporation.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

EXHIBIT "A" Property Description

EXHIBIT A

Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract:

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

to change if survey updated.

ATTACHMENT B
TO LOAN AGREEMENT

NOTE

NOTE

$25,000,000,00 _____, 2021

I. PROMISE TO REPAY.

FOR VALUE RECEIVED, APV REDEVELOPMENT CORPORATION, a Texas non-profit corporation ("Maker"), hereby agrees and promises to pay to the order of **THE CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas ("Payee"), at City Hall Annex, 900 Bagby, City of Houston, Harris County, Texas 77002 or at any other place as the holder hereof may from time to time in writing designate, on the Maturity Date, in coin or currency, which at the time of payment shall constitute legal tender of the United States of America, the principal sum of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,,000.00), or so much thereof as may be advanced, together with interest on the principal balance from time to time remaining unpaid at the rates set forth below.

The loan ("Loan") evidenced by this Note is subject to the terms and conditions of that one certain Loan Agreement ("Loan Agreement") between Maker, Payee and **2100 MEMORIAL REDEVELOPMENT, LP** ("Owner") of even date herewith. All capitalized terms used herein that are not defined herein shall have the same meaning as given in the Loan Agreement.

The proceeds of the Loan will be used to fund a loan from Maker to Owner ("Owner Loan") for the costs for the construction, repair, renovation and/or rehabilitation of certain improvements located on the property located at 2100 Memorial Drive, Houston, Harris County 77007 ("Project") which houses or is to house low- or moderate-income persons. Funding for the City Loan is being provided to the City pursuant to 2017 Community Development Block Grant Disaster Recovery program funds awarded by the United States Department of Housing and Urban Development through the Texas General Land Office ("GLO") and is subject to the terms and conditions of a contract between GLO and the City. The Loan is a community development activity undertaken by the City and authorized under Chapter 373 or Chapter 374 of the Texas Local Government Code.

The Note will be advanced in two tranches. The first tranche ("Tranche 1") in the amount of EIGHT MILLION AND NO/100 DOLLARS ($8,000,000.00) will be advanced for acquisition and demolition costs for the Project and the second tranche ("Tranche 2") in the amount of SEVENTEEN MILLION AND NO/100 DOLLARS ($17,000,000.00) will be advanced for costs associated with the construction of the Project and both Tranche 1 and Tranche 2 shall be advanced in accordance with and subject to the requirements set forth in the Loan Agreement.

II. TERM.

The term of the Loan shall commence on the date on which Loan Documents (as defined in the Loan Agreement) are executed (the "Closing Date") and shall mature upon the last day of the Affordability Period (as defined in the Loan Agreement) (the "Maturity Date"). This Note is secured by and entitled to the benefits of a Collateral Assignment of Note and Liens of even date herewith executed by Maker to the City covering the Owner Loan and the Owner Loan Documents, including the Deed of Trust executed by Maker to Tom McCasland, Trustee covering fee ownership in the Project and the Leasehold Deed of Trust executed by Owner to Tom McCasland, Trustee, covering leasehold ownership interest in the Project, together with the buildings and other improvements now or hereafter erected thereon and the personal property attached to or used in connection therewith.

III. PAYMENTS.

NOTE

$25,000,000,00 _____, 2021

I. PROMISE TO REPAY.

FOR VALUE RECEIVED, APV REDEVELOPMENT CORPORATION, a Texas non-profit corporation ("Maker"), hereby agrees and promises to pay to the order of **THE CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas ("Payee"), at City Hall Annex, 900 Bagby, City of Houston, Harris County, Texas 77002 or at any other place as the holder hereof may from time to time in writing designate, on the Maturity Date, in coin or currency, which at the time of payment shall constitute legal tender of the United States of America, the principal sum of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,,000.00), or so much thereof as may be advanced, together with interest on the principal balance from time to time remaining unpaid at the rates set forth below.

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III. PAYMENTS.

unearned interest exceeds the principal balance, the excess shall be refunded to Maker. Any interest computation under this Note and the Loan Agreement shall be at not more than the Maximum Rate upon the portion of the face amount hereof representing principal that remains unpaid from time to time, it being the intention of the parties hereto to conform strictly to the laws applicable to the loan evidenced by this Note and the Loan Agreement, and should it be held that interest payable under this Note and the Loan Agreement is in excess of the Maximum Rate, the interest chargeable hereunder shall be reduced to the maximum amount permitted by law.

X. RESERVED

XI. GOVERNING LAW AND VENUE

This Note is made in the State of Texas and shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to conflicts of laws principles. Venue for any disputes relating in any way to this Note shall lie exclusively in Harris County, Texas.

XII. SUCCESSORS

This Note shall be binding upon the parties hereto and their respective successors and assigns.

XIII. JURY WAIVER

MAKER AND PAYEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

XIV. ENTIRE AGREEMENT

THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

XV. RECOURSE

Notwithstanding anything to the contrary set forth herein, or in the City Loan Agreement, or in any other documents executed in connection with the City Loan, upon the commencement of the Affordability Period, Maker and its Partners, except Guarantor during the effective period of the Guaranty Agreement (if Guarantor is a partner), shall have no personal liability under this Note, the Deed of Trust or the Loan Agreement for the repayment of the indebtedness or for the performance of any other obligations of Maker under the Loan Documents except as set forth below, and Payee's only recourse for the satisfaction of the indebtedness payable under the Loan Documents and the performance of such obligations shall be Payee's exercise of its rights and remedies with respect to the Project, Property and any other collateral held by Payee as security for the indebtedness except as set forth below. This limitation on Maker's liability shall not limit or impair Payee's enforcement of its rights against the Maker for any indebtedness or obligations of Maker under Section 15(b) of below.

(b) Maker shall be personally liable to Payee for the repayment of a portion of the indebtedness payable under the Loan Documents equal to any loss or damage suffered by Payee as a result of:

(i) failure of Maker to pay to Payee upon demand after a Default, all rents, revenues and profits from the operation of the Project to which Payee is entitled under the Deed of Trust and the amount of all security deposits collected by Maker from tenants then in residence, subject to the rights of any senior lender with a first lien deed of trust on the Project;

(ii) failure of Maker to apply all insurance proceeds and condemnation proceeds as required by the Loan Documents, subject to the rights of any senior lender with a first lien deed of trust on the Project;

(iii) failure of Maker, to comply with the requirements in the Deed of Trust or the Loan Agreement relating to the delivery of books and records, statements, schedules and reports;

(iv) fraud or any written material misrepresentation by Maker or any officer, agent, director, partner, member or employee of Maker in connection with the application for the Loan, the Loan Documents, or any request by Payee;

(v) failure to apply rents, revenues and profits, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable) and then to debt service amounts due, except that Maker will not be personally liable (i) to the extent that Maker lacks the legal right to direct the disbursement of such sums because of a senior loan deed of trust encumbering the Project, or bankruptcy, receivership or similar judicial proceedings, or (ii) with respect to surplus cash distributed in any calendar year if Maker has paid all operating expenses and debt service amounts due for that calendar year, provided that such distribution does not violate the terms of the City Loan Agreement;

(vi) failure of Maker to pay all deductibles required under any of the insurance policies required to be maintained under the Loan Agreement provided that funds are available to pay the deductibles;

(vii) the failure of the Maker to complete the construction of the Project by the date required under the Loan Agreement;

(viii) the failure of the Maker, due to its negligence, fraud, or other purposeful act to qualify the Project as a "qualified low-income housing project" under Section 42(g) of the Code; or

(ix) Failure of Maker due to its negligence, fraud, or other purposeful act to comply with the Restrictive Covenants executed in connection with the City Loan Agreement.

If at any time any payment received by Payee hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law (as defined below), then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Payee and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand. For purposes of this Note, "**Debtor Relief Law**" shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts or similar laws affecting the rights of creditors.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note the approximate principal amount of $32,000,000 (the "Construction Loan Note") issued by Owner and payable to Wells Fargo Bank, National Association (the "Senior Lender"), or order, to the extent and in the manner provided in that certain Intercreditor, Subordination and Funding Agreement of even date herewith between the Payee of this Note, the Senior Lender, Maker, Owner, Victory Street Public Facility Corporation and the fiscal agent (the "Subordination Agreement"). The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Mortgage securing the Construction Loan Note 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 Mortgage securing this Note 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 this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the City under the Subordination Agreement. Notwithstanding the foregoing, in the event that Tranche 2 does not close, and Construction Loan Note is not executed and delivered, or Wells Fargo Bank, National Association is no longer the Senior Lender, then this subordination will not apply.

[EXECUTED ON THE FOLLOWING PAGE]

Signature Page to
Promissory Note

EXECUTED to be effective as of the date first written above.

MAKER:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

ATTACHMENT C-1
TO LOAN AGREEMENT

DEED OF TRUST, SECURITY AGREEMENT
AND FINANCING STATEMENT

When recorded, return to:

THE CITY OF HOUSTON

P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

From

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

as Grantor

to

TOM MCCASLAND,
as Trustee

for the benefit of

CITY OF HOUSTON
as Beneficiary

DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

That in consideration of certain indebtedness hereinafter described, justly owing by **APV REDEVELOPMENT CORPORATION,** a Texas nonprofit corporation ("**Grantor**"), to the **CITY OF HOUSTON** ("**Beneficiary**") and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other valuable consideration paid to the Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor has GRANTED, ASSIGNED, TRANSFERRED and CONVEYED, and does hereby GRANT, ASSIGN, TRANSFER and CONVEY unto **TOM MCCASLAND**, as trustee ("**Trustee**"), all of the following described property is collectively referred to herein as the "**Property**":

A. All of Grantor's right, title and interest, whether now or hereafter arising, in and to the real property situated in Harris County, Texas, described in **EXHIBIT A** hereto, together with all right, title and interest now and/or hereafter owned by Grantor, its successors and assigns, in the whole or any part of the above described real property and/or any street or road adjacent and/or contiguous to the above described real property ("**Land**").

B. All of Grantor's right, title and interest, whether now or hereafter arising, in and to all buildings and other improvements now or hereafter placed on the Land, as well as all appurtenances, betterments and additions thereto ("**Improvements**"); all and singular the rights, privileges, hereditaments and appurtenances in anywise incident or appurtenant to the Land and Improvements; and the rents, revenue, profits and income from the Land and Improvements.

C. All of Grantor's right, title and interest, whether now or hereafter arising, in and to any and all plumbing, electrical, heating, cooling and other equipment and all building materials and other goods of every type, kind and character that are now or hereafter situated upon the Land and which (i) are intended to be incorporated into the Improvements or (ii) are now, or hereafter become, fixtures attached to the Land or the Improvements; any and all other goods of every type, kind and character, including without limitation, all appliances, furniture, fixtures, inventory and equipment now owned or hereafter acquired by Grantor that are now or hereafter situated upon the Land (whether or not situated within or attached to the Improvements) and that facilitate the use and occupancy of the Improvements for the purpose for which they were or are to be constructed; all plans and specifications for the Improvements, all rights of Grantor under all existing and future leases, construction, maintenance and other contracts covering or relating to the Land or the Improvements, all tenants deposits made pursuant to or in connection with such leases, all rights of ingress and egress, easements, water and wastewater rights, and to the extent assignable, all licenses, permits, franchises, certificates, accounts, instruments, chattel paper, documents, agreements, contracts, including without limitation any agreements with the United States Department of Housing and Urban Development (to the extent assignable), and general intangibles, and all rights of Grantor in and to any development rights relating to the Land or the Improvements (including, without limitation, trade names and symbols used in connection therewith and any deposits with utility companies) and all other rights and privileges obtained in connection with, relating to or associated with the Land or the Improvements (collectively, the "**Personalty**") and all proceeds of the Personalty.

D. To the extent the assignment thereof is enforceable under applicable law, all of Grantor's right, title and interest, whether now or hereafter arising, in and to any tax refunds, including interest thereon, tax rebates, ad valorem tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property but excluding any Housing Tax Credits available pursuant to Section 42 of the Internal Revenue Code, as amended.

E. All of Grantor's right, title and interest in the proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent

domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages.

F. All of Grantor's right, title and interest, if any, in and to all substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores (collectively, "**Minerals**").

G. All funds of Grantor that may be deposited with Beneficiary at any time and from time to time for any purpose, which funds shall be deemed to be part of the Personalty for purposes hereof. In the event of a conflict between the terms and conditions of this instrument and the instrument under which Beneficiary holds any funds of Grantor, the terms and conditions of the latter instrument shall prevail.

TO HAVE AND TO HOLD the Property unto the Trustee and the assigns of the Trustee, and Grantor does hereby bind Grantor and the successors and assigns of Grantor, to WARRANT AND FOREVER DEFEND all and singular the Property and title thereto unto the Trustee and unto the assigns of the Trustee, against every person or party whomsoever claiming or to claim the same, or any part thereof, subject, however, to the permitted encumbrances set forth on **EXHIBIT B** attached hereto (the "**Permitted Encumbrances**") and the liens securing the Senior Note (if any).

I.

SECURITY FOR PERFORMANCE OF OBLIGATIONS

This conveyance is made in trust, however, to secure the performance of all covenants and agreements contained in this Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") and that one certain Loan Agreement executed between Grantor, Tenant and the Beneficiary ("**City Loan Agreement")** relating to the Property) and the full and prompt payment when due (by lapse of time or otherwise), of the following indebtedness (the "**Indebtedness**"):

A. Loan. All sums, including principal, interest and attorneys' fees, called for in that certain promissory note (the "**Note**") executed by Grantor payable to the order of Beneficiary, in the principal amount of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00), which Note evidences that certain loan from Beneficiary to Grantor of the amount set forth in the Note (the "**Loan**"), and which Note bears interest at the rates therein stated and provides for acceleration of maturity should a Default (as defined in the City Loan Agreement) occur.

B. Other Sums. All other sums owing by Grantor to Beneficiary or other holder(s) of any part of the Indebtedness or becoming due under the City Loan Agreement or any Loan Documents. (This Deed of Trust and all other instruments now or hereafter evidencing, governing or securing any part of the Indebtedness are hereinafter collectively referred to as the "**Loan Documents**").

C. Other Obligations. This Deed of Trust also secures Grantor's performance under certain Restrictive Covenants with respect to the Property executed by Grantor in connection with the City Loan Agreement.

II.

PAYMENT OF THE INDEBTEDNESS; DEFAULT; ENFORCEMENT OF TRUST

A. Payments. If the Indebtedness is fully paid and if all of Grantor's covenants and agreements herein and in the City Loan Agreement and the other Loan Documents are fully kept and performed, and if no Default then exists, then this conveyance shall thereupon become of no further force and effect and shall be released by Beneficiary or other holder(s) of the Indebtedness upon the written request and at the expense of Grantor.

B. Enforcement. But if any Default (as defined in the City Loan Agreement) exists beyond any applicable notice and cure period, the whole of the Indebtedness shall at the option of Beneficiary, without further notice to Grantor or any other person, which notice is hereby waived, become immediately due and payable and thereupon, or at any time thereafter that the Indebtedness or any part thereof remains unpaid, it shall be the duty of the Trustee, or the Substitute Trustee, as hereinafter defined, at the request of Beneficiary, or the holder(s) of the Indebtedness, which request shall be presumed, to enforce this Trust and to sell as an entirety, or in parcels, by one sale or by several sales, held at one time or at different times, as the Trustee acting may elect (all rights to a marshaling of Grantor's assets, including Property, or to a sale in inverse order of alienation, being hereby expressly waived by Grantor), the Property in the county in which the Property, or a part of the Property to be sold, is situated (the "**County**") at such area at the courthouse designated by the Commissioner's Court of the County as the area where sales are to take place, or if no area is designated, at the door of the County Courthouse, each sale to be made on the first Tuesday of a calendar month between the hours of 10:00 A.M. and 4:00 P.M. to the highest bidder for cash at public auction, after both posting or causing to be posted written or printed notice of the time (including the earliest time at which the sale will occur), place, and term of sale at the door of the Courthouse of the County and filing or causing to be filed a copy of the notice in the Office of the County Clerk of the County, for at least twenty-one (21) days preceding the day of sale, and to execute and to deliver to the purchaser(s) at each such sale proper conveyance(s) of the property interest sold, with general warranty of title binding upon Grantor and the successors and assigns of Grantor; or Beneficiary or other holder(s) of the Indebtedness may foreclose or cause to be foreclosed the Lien of this Deed of Trust, in whole or in part, through judicial foreclosure or in any manner as may at any time be authorized under the statutes of the State of Texas. In addition, the holder(s) of the Indebtedness to which the power is related shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on each person obligated to pay the Indebtedness according to the records of the holder(s). Service of the notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of the holder(s) of the Indebtedness, in a post office or official depository under the care and custody of the United States Postal Service. The Affidavit of any person having knowledge of the facts to the effect that service was completed shall be prima facie evidence of the fact of service. No notice of the sale or sales other than that herein provided for need be given to Grantor or any other person or party, and any other notice is hereby waived. Beneficiary or other holder(s) of the Indebtedness shall have the right to become the purchaser at any sale to the same extent as any other party, being the highest bidder, and in lieu of paying cash may credit the amount of the bid upon the Indebtedness up to the full amount of the Indebtedness then unpaid.

C. Proceeds. The Trustee acting shall apply the proceeds arising from each sale, first, to pay all reasonable expenses of the sale actually incurred, second, to reimburse Beneficiary for any reasonable expenses incurred by Beneficiary in protecting, administering or operating the Property after the occurrence of the applicable Default and prior to the foreclosure sale and third, to the payment of the Indebtedness (including all principal, interest and reasonable attorneys' fees for legal work performed owing as part of the Indebtedness). The proceeds of each sale paid to Beneficiary may be applied by Beneficiary on the Indebtedness in any order and manner as Beneficiary may elect. Any surplus funds from the foreclosure sale or sales hereunder shall be paid to Grantor or the person(s) lawfully entitled thereto.

III.

UNMATURED INDEBTEDNESS

If any Default exists beyond any applicable cure periods, Beneficiary or other holder(s) thereof shall, in addition to any remedies available to Beneficiary at law or in equity, have the option to proceed with foreclosure in satisfaction of such item or items, either through the courts or by directing the Trustee, or the Substitute Trustee, as hereinafter provided for, to proceed as if under a foreclosure, conducting the sale as herein provided and without declaring the whole debt due, and if a sale is made because of such Default, the sale may be made subject to the unmatured part of the Indebtedness, but as to the unmatured part of the Indebtedness, this Deed of Trust shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness, it being the purpose hereof to provide for a foreclosure and sale of the Property, in whole or in part, for any matured portion of the Indebtedness without exhausting the power of foreclosure and the power to sell the Property, in whole or in part, for any other part of the Indebtedness subsequently maturing.

IV.

SUBSTITUTE TRUSTEE

In case of the resignation of the Trustee, or the inability (through death or otherwise), refusal or failure of the Trustee to act, or at the option of Beneficiary or the holder(s) of the Indebtedness for any other reason (which reason need not be stated), a substitute trustee ("**Substitute Trustee**") may be named, constituted and appointed by Beneficiary or the holder(s) of the Indebtedness, without other formality than an appointment and designation in writing; the appointment and designation shall be full evidence of the right and authority to make the same and of all facts therein recited; and this conveyance shall vest in the Substitute Trustee the title, power and duties herein conferred on the Trustee originally named herein and the conveyance of the Substitute Trustee to the purchaser(s) at any sale shall be equally valid and effective. The right to appoint a Substitute Trustee shall exist as often and whenever from any of said causes, the Trustee, original or Substitute, resigns, or cannot, will not, or does not act, or Beneficiary or the holder(s) of a majority of the Indebtedness desire to appoint a new Trustee. No bond shall ever be required of the Trustee, original or Substitute. The recitals in any conveyance made by the Trustee, original or Substitute, shall be accepted and construed in court and elsewhere as prima facie evidence and proof of the facts recited and no other proof shall be required as to the request by Beneficiary or the holder(s) of a majority of the Indebtedness to the Trustee to enforce this Trust, or as to the notice of or holding of the sale, or as to any particulars thereof, or as to the resignation of the Trustee, original or Substitute, or as to the inability, refusal or failure of the Trustee, original or Substitute, to act or as to the election of Beneficiary or the holder(s) of a majority of the Indebtedness to appoint a new Trustee, or as to appointment of a Substitute Trustee, and all prerequisites of the sale shall be presumed to have been performed; and each sale made under the powers herein granted shall be a perpetual bar against Grantor and the successors and assigns of Grantor.

V.

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF GRANTOR

For the purpose of better securing to Beneficiary the payment of the Indebtedness, Grantor represents, warrants and covenants to Beneficiary as follows:

A. Title, Authority, and Performance under Leases. At the time of the execution and delivery of this Deed of Trust, Grantor is the sole and lawful owner of the Land in fee simple, and Grantor has the authority to execute this Deed of Trust. The Property is free from all encumbrances and charges whatsoever except for the liens securing the Senior Note (if any and as defined in the City Loan Agreement)

and the Permitted Encumbrances. No assignments or pledges are currently in effect with respect to any leases of or rentals or income from the Property except for assignments and/or pledges to Beneficiary and those expressly stated in **EXHIBIT B** and those securing the Senior Note (if any) and until the Indebtedness is fully paid, at which time this Deed of Trust will be released. Grantor shall not make any additional assignment or pledge thereof without Beneficiary's prior written consent. Notwithstanding the foregoing, the Property is subject to a Ground Lease between Grantor as landlord and 2100 Memorial Redevelopment, L.P. ("**Tenant**"), as tenant. In addition, Grantor warrants that (a) the Ground Lease is in full force and effect; (b) there are no defaults under the Ground Lease and no event has occurred but for the passage of time or notice or both, would constitute a default under the Ground Lease; and (c) all rents and other sums due under the Ground Lease have been paid in full.

B. Tax and Insurance Escrow. Unless Grantor and/or Tenant is already required to maintain an escrow account with the Senior Lender (if any and as defined in the City Loan Agreement) upon written request by Beneficiary, Grantor shall or shall cause Tenant to deposit with Beneficiary on a monthly basis, or at other intervals as specified, a sum that shall be sufficient to pay taxes, assessments, charges, and insurance premiums as they become due, all as reasonably estimated by Beneficiary, which sum shall be held by Beneficiary (or by a banking institution selected by Beneficiary whose funds are insured by a federal agency or instrumentality) in trust to pay taxes, assessments, charges and premiums, but which shall not bear interest and may be commingled with other funds. If at any time the funds so held by (or on behalf of) Beneficiary are insufficient to pay any tax, assessment, charge or insurance premium, Grantor shall, upon receipt of notice, shall or shall cause Tenant to deposit with Beneficiary (or such banking institution), all additional funds as are necessary to remove the deficiency. If the Indebtedness is for any reason declared immediately due and payable, funds held by (or on behalf of) Beneficiary for payment of taxes, assessments, charges or premiums as herein provided may, at Beneficiary's election, be applied on the Indebtedness in any manner as Beneficiary so elects. In the event that Grantor or Tenant is escrowing with Senior Lender (if any) a sum for payment of taxes, assessments, charges and insurance premiums and such amount is sufficient to fully discharge such taxes, assessments, charges and insurance premiums, Beneficiary agrees not to require an additional escrow deposit under this paragraph. In the event that Beneficiary does not require the escrow deposits described in the paragraph, Grantor shall or shall cause Tenant to provide Beneficiary with written evidence that (i) all applicable taxes and assessments have been paid at least thirty (30) days prior to delinquency and (ii) all insurance premiums have been paid thirty (30) days before the renewal date of the applicable policies. Grantor shall or shall cause Tenant to duly pay and discharge, or cause to be paid and discharged, all taxes, assessments, charges, and insurance premiums before they become past due. The Property is currently exempt from all ad valorem taxes and has been exempt from said taxes in the five (5) years preceding the effective date of this Deed of Trust. The Grantor expects that the Property shall continue to receive the same ad valorem exemption upon final closing.

C. Insurance. Grantor shall or shall cause Tenant to, prior to or concurrently with the execution of this Deed of Trust, deliver to Beneficiary all of the following insurance policies together with evidence of such other insurance coverage as required pursuant to the City Loan Agreement, accompanied by paid premium receipts evidencing payment in full of the required premiums for at least the first full year of coverage:

(i) fire insurance with extended coverage and standard Beneficiary and replacement cost endorsement for the full insurable value of the insurable portion of the Property, but in no event for an amount less than the amount of the Note (90% shall be acceptable co-insurance rates for fire insurance); and

(ii) public liability insurance in the amount of $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate for a twelve (12) month policy period. Each renewal policy shall be delivered to Beneficiary not less than thirty (30) days before the termination of the prior policy and with each policy there shall be delivered to Beneficiary a receipt showing payment of the premium therefor.

Upon request, Grantor shall or shall cause Tenant to also carry additional insurance or additional reasonable amounts of insurance covering Grantor or the Property as Beneficiary shall reasonably require, insuring against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in the region where the Property is located.

If the Property or any part thereof has been or at any time during the term of this Deed of Trust or any extension or renewal thereof is designated as a flood-prone or flood-risk area pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law, Grantor shall or shall cause Tenant to obtain flood insurance in such total amounts as Beneficiary may from time to time require and shall otherwise comply with the requirements of the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, or any successor law.

All insurance required under this Deed of Trust and the City Loan Agreement shall be fully paid for, non-assessable, and such policies shall contain such provisions, endorsements, and expiration dates as Beneficiary shall reasonably require. Such policies shall be issued by insurance companies authorized and licensed to transact business in the State of Texas with ratings acceptable to Beneficiary in its sole and absolute discretion and shall name Beneficiary as an additional insured.

D. Operations. Grantor will abstain from and not permit the commission of waste in or about the Property, will maintain the Property in good operating condition and repair at all times, ordinary wear and tear and insured casualty excepted, will not remove or demolish the buildings or other improvements now or hereafter constituting a part of the Property, or alter the design or structural character of any buildings or improvements unless Beneficiary shall first consent thereto in writing, which consent shall be granted or denied in Beneficiary's reasonable discretion, and will comply with the Ground Lease and all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property or the use thereof, which consent shall not be unreasonably withheld, delayed or conditioned. Grantor will not seek or acquiesce in a zoning reclassification of all or any portion of the Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Property, without Beneficiary's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

E. Obligations Under Other Loan Documents. Grantor hereby agrees to comply with and perform all of its obligations under the other Loan Documents and agrees to be bound by the representations, warranties and covenants made by Grantor contained in the Loan Documents. All of representations, warranties and covenants contained in the other Loan Documents are hereby fully incorporated herein.

F. Obligations under Ground Lease. (i) Grantor as landlord shall promptly and fully keep, observe, perform or cause to be kept, observed and performed all of the material terms, covenants, provisions and agreements imposed upon or assumed by Grantor under the Ground Lease including any amendments or supplements thereto, and Grantor shall not do or fail to do or permit or fail to permit to be done, any act or thing, the doing or omission of which will give the Tenant a right to terminate the Ground Lease. Grantor shall not under any circumstances modify, cancel, amend or terminate the Ground Lease, without Beneficiary's prior written consent, and any attempted modification, cancellation, amendment or termination of the Ground Lease without such consent shall be void and of no force or effect whatsoever; (ii) If Grantor shall, in any manner, fail to comply with subsection (i) above, Grantor covenants and agrees that Beneficiary may (but shall not be obligated to) take, upon five (5) business days' written notice to Grantor (or upon lesser notice, or without notice, if Beneficiary reasonably deems that the same is required to protect its interest in the Property), any action that Beneficiary shall reasonably deem necessary or desirable to keep, observe and perform or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Property and take all action thereon as may be necessary therefor, or to prevent or cure any default by either Grantor in the performance of or compliance

with any of such Grantor's covenants or obligations under the Ground Lease. Grantor shall promptly deliver to Beneficiary a copy of any notice relating to defaults received under the Ground Lease and allow Beneficiary the right to cure such default for a period of ninety (90) days. Beneficiary may expend such sums of money as are reasonable and necessary for any such purposes, and the Grantor hereby covenants and agrees to pay to Beneficiary, immediately upon demand, all sums so reasonably expended by Beneficiary, together with interest thereon from the date of such payment at the Default Rate, and until so paid by the Grantor, all sums so reasonable expended by Beneficiary and the interest thereon shall be added to the obligations secured by the lien and legal operation and effect of this Deed of Trust.

G. Casualty and Condemnation Proceeds. Subject to the terms of the City Loan Agreement and the Intercreditor Agreement (as defined below), in the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, Grantor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Indebtedness in balance and rebuild the affected portion of the Property in a manner that provides adequate security to Beneficiary for repayment of the Indebtedness or if such proceeds are insufficient then Grantor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no Default then exists under the Loan Documents that will not be cured by rebuilding the affected portion of the Property. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Indebtedness in a manner that provides adequate security to Beneficiary for repayment of the remaining balance of the Indebtedness.

H. Failure to Pay. All taxes and any assessments that are due and payable affecting the Property shall be paid and discharged in full prior to execution and delivery of this Deed of Trust, or as they subsequently become due and payable and prior to delinquency. If Grantor fails to pay any tax, assessment, charge or insurance premium affecting the Property in accordance with the terms of this Deed of Trust, Beneficiary may, at its option, pay the same, or if Grantor fails to perform any of Grantor's covenants or agreements set forth in this Deed of Trust in accordance with the terms hereof, Beneficiary may, at its option, correct or cause to be corrected the same and pay any sums in connection therewith as Beneficiary shall determine to be necessary or advisable, and all taxes, assessments, charges, insurance premiums and sums paid by Beneficiary in connection with such matters (collectively, whether one or more, an "**Assessment**") shall be immediately repayable by Grantor to Beneficiary, together with interest on each amount at the default rate provided in the Note from the date the sum is paid by Beneficiary, until the same is refunded to Beneficiary and all such amounts and interest thereon, shall be secured hereby as part of the Indebtedness. Notwithstanding the foregoing, Grantor shall have the right to object and protest to ad valorem taxes on the Property in good faith and with due diligence provided that (i) no Default exists under this Deed of Trust or any of the other Loan Documents, (ii) Grantor gives Beneficiary prior written notice of its intent to contest an Assessment; (iii) Grantor demonstrates to Beneficiary's reasonable satisfaction that (A) the Property will not be sold to satisfy the Assessment prior to the final determination of the legal proceedings, (B) Grantor has taken such actions as are required or permitted to accomplish a stay of any such sale, and (C) Grantor has either (1) furnished a bond or surety (satisfactory to Beneficiary in form and amount) sufficient to prevent a sale of the Property or (2) at Beneficiary's option, deposited one hundred fifty percent (150%) of the full amount necessary to pay any unpaid portion of any Assessment with Beneficiary; and (iv) such proceeding shall be permitted under any other instrument to which Grantor or the Property is subject (whether superior or inferior to this Instrument).

I. Title Litigation. Subject to title insurance coverage, in case of any litigation involving the title to any part of the Property, or the validity of this Deed of Trust, Beneficiary may be represented in the litigation through attorneys of its own selection and Grantor shall, upon demand, promptly reimburse Beneficiary for all court costs and reasonable attorneys' fees incurred by Beneficiary in defending and/or protecting its rights in any litigation.

J. Default. Subject to applicable notice, grace and cure provisions and the other terms of this Deed of Trust and the other Loan Documents, if a Default extends beyond any applicable notice and cure period (as set forth in the City Loan Agreement), the whole of the Indebtedness, at the option of Beneficiary, shall become immediately due and payable, without further notice or demand.

K. Tenancy at Sufferance. Following any sale of the Property, or any part thereof, under the provisions of this Deed of Trust, and to the extent permissible under applicable law, Grantor shall be obligated to immediately vacate the premises and prior to such vacation shall be a tenant at sufferance of the purchaser of the Property sold and shall be subject to eviction in an action of forcible detainer; provided, the provisions of this Subparagraph K shall be subject to any agreements made in writing by Beneficiary with reference to any existing and/or future leases; provided, further, to the extent permitted under applicable law, the purchaser at any foreclosure sale shall have the option to affirm any then existing leases or tenancies or otherwise to succeed to the rights of Grantor thereunder.

L. Subrogation. To the extent that any of the Indebtedness represents funds utilized to satisfy any outstanding Indebtedness or obligations secured by liens, rights, or claims against the Property or any part thereof, Beneficiary shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any outstanding indebtedness or obligation so satisfied, however remote, regardless of whether the liens, rights, superior titles and equities are assigned to Beneficiary or released by the holder(s) thereof.

M. Homestead Disclaimer. Grantor represents and covenants that the Property forms no part of any property owned, used, or claimed by Grantor as a business or residential homestead, or as exempt from forced sale under the laws of the State of Texas and disclaims and renounces all and every such claim thereto.

N. Additional Transfers and Encumbrances. Beneficiary shall have the right to declare the Indebtedness secured hereby immediately due and payable in the event the Grantor sells, transfers, assigns, or conveys its interest, whether voluntarily or involuntarily, in the Property, or any part thereof, without the prior written consent of Beneficiary, such consent not to be unreasonably withheld, delayed or conditioned or in the event any junior or subordinate mortgage, lien, deed of trust, or other encumbrance is placed upon the Property without the prior written consent of Beneficiary, provided the foregoing shall not prohibit the removal of worn or obsolete Personalty that is replaced with new items of the same or similar quality. If Beneficiary consents to the sale, transfer, assignment, or conveyance of Grantor's interest in the Property, or any part thereof, and waives in writing its right to accelerate the Indebtedness secured hereby as provided in this Subparagraph N, Beneficiary may require that the transferee assume all the obligations of Grantor under this Deed of Trust, the City Loan Agreement and the Note in a form reasonably acceptable to Beneficiary and its legal counsel. For purposes of this Subparagraph N, "transfer" of the Property includes any direct or indirect transfer of any beneficial ownership in Grantor (except as allowed by the City Loan Agreement) or the general partner or managing member of Grantor except to the extent that such transfer is permitted under the Loan Agreement (including the incorporated provisions of the City Loan Agreement) after satisfaction of all requirements for such transfer including the consent of the Beneficiary, if required for such transfer.

O. No Reliance on Beneficiary. Grantor is experienced in the ownership and operation of properties similar to the Property, and Beneficiary is relying solely upon Grantor's expertise and business plan in connection with the construction of the Improvements and ownership and operation of the Property. Grantor is not relying on Beneficiary's expertise or business acumen in connection with the Property or in connection with the construction of the Improvements.

P. No Litigation. Except as disclosed in writing to Beneficiary, there are no (i) actions, suits, or proceedings, at law or in equity, before any Governmental Authority (as defined in the City Loan Agreement) or arbitrator pending or threatened against or affecting Grantor, any guarantor, or involving the Property, (ii) outstanding or unpaid judgments against the Grantor or the Property, or (iii) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

Q. Payment for Labor and Materials. Grantor shall or shall cause Tenant to timely pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Property (which shall be deemed an Assessment on the Property) and never permit to exist in respect of the Property or any part thereof any unbonded lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event, Grantor shall never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Encumbrances and the liens securing the Senior Note. In the event that Grantor becomes aware that such lien has been recorded against the Property, Grantor shall have such lien released within thirty (30) days. If Grantor fails to pay or bond around any bills for labor, materials, and specifically fabricated materials incurred in connection with the Property, Beneficiary shall have the rights set forth in Section V.H for Grantor's failure to pay any Assessment, as well as the other rights and remedies provided under this Deed of Trust.

R. Tax on Deed of Trust. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Grantor will pay when due all such taxes, provided that if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Grantor to pay such taxes, then Grantor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Beneficiary.

S. ERISA. If and to the extent that Grantor is obligated under any plan governed by or subject to the Employee Retirement Income Security Act, as amended ("**ERISA**"), Grantor shall fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA and the Internal Revenue Code, as amended ("**IRC**"). Furthermore, Grantor shall comply in all material respects with any and all applicable provisions of ERISA and the IRC and will not incur or permit to exist any unfunded liabilities to the Pension Benefit Guaranty Corporation or to such plan under ERISA or the IRC.

T. Disclosures. If at any time Grantor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which are likely to have a material adverse effect on the Property or Grantor's financial condition, Grantor shall promptly notify Beneficiary of the existence or occurrence thereof and of Grantor's opinion as to what effect such may have on the Property or Grantor. Grantor shall also give prompt notice to Beneficiary of (i) the serious illness or death of any principal or key employee of Grantor, (ii) any litigation or dispute, threatened or pending against or affecting Grantor, the Property or any guarantor which could have a material adverse effect on the Property or the financial condition or business of any of the aforementioned parties, (iii) any Default, (iv) any default by Grantor beyond all applicable notice, grace, and cure periods or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party, and (v) any change in the character of Grantor's business as it existed on the date hereof.

VI.

CAPTIONS

The captions contained in this Deed of Trust are for convenience only and shall not be taken into account in determining the meaning of any provision of this Deed of Trust.

VII.

ASSIGNMENT OF LEASES

As further security for the payment of the Indebtedness, and subject to the rights of senior lienholders, Grantor hereby assigns to Beneficiary, its successors and assigns, all leases, whether now in existence or hereafter created, covering all or any portion of the Property (including the Ground Lease)

together with all rents to become due under each such lease, subject, however, to any prior assignment in connection with senior indebtedness (if any). For so long as no Default exists, Grantor may collect the rents, but not more than one (1) month in advance, in the ordinary course of business, unless otherwise provided by the express terms of the leases and approved by Beneficiary. In the event of any Default and at any and all times during the continuance thereof, in addition to all other rights and remedies of Beneficiary, Beneficiary shall have the exclusive right and power (but not the obligation) to enter upon and take possession of the Property or any part thereof, to rent or re-rent the same, either in the name of Beneficiary or Grantor, to receive all rents, revenues, profits, or other income from the Property and to apply all amounts received first, to the costs and expenses incurred by Beneficiary in protecting and operating the Property and next, to the payment of the Indebtedness in any manner and in any order of priority as Beneficiary shall determine. This action by Beneficiary shall not operate as a waiver of the Default, or as an affirmance of any lease or of the rights of any tenant of title to that part of the Property covered by the lease or held by the tenant, should the Property, or any part thereof, be acquired by Beneficiary or other purchaser at a foreclosure sale. The right of Beneficiary to receive all rents, revenues, profits, or other income from the Property during the continuance of any Default shall be applicable whether Beneficiary has entered upon or taken possession of the Property, or has otherwise attempted to exercise its rights hereunder and if any rents, revenues, profits, or other income are paid to or received by Grantor, Grantor shall immediately pay the same to Beneficiary, without the necessity of any request or demand therefor. Grantor agrees at any time and from time to time until the indebtedness is paid in full to execute and to deliver any additional assignments of leases and/or rents, security agreements and other instruments as Beneficiary shall from time to time reasonably require, provided such instruments do not increase Grantor's obligations (except as may be contemplated by the Loan Documents) or decrease Grantor's rights under the Loan Documents.. The substance, form, execution and delivery of additional assignments of leases and/or rents, security agreements and other instruments shall be reasonably satisfactory to Beneficiary.

III.

PERSONALTY

This Deed of Trust covers and includes, without limitation, Grantor's interest in the Personalty hereinabove described.

IX.

USE OF PERSONALTY

Grantor represents that all Personalty is property for business use and is not consumer goods. Grantor further covenants that there are and shall be no conditional sales contracts that cover any of the Personalty.

X.

SECURITY INTEREST IN PERSONALTY

Without limiting any of the provisions of this instrument, Grantor, as referred to in this paragraph as "**Debtor**," expressly does the following:

A. Grant. Debtor hereby grants unto Beneficiary and its successors and assigns, described herein as Secured Party, and referred to in this paragraph as "**Secured Party**", a security interest in Debtor's interest in the Personalty (subject to the Permitted Encumbrances and the security interests and rights granted to Senior Lender, if any.

B. UCC Remedies. Debtor agrees, in addition to any other remedies granted in this instrument to Secured Party or the Trustee, that Secured Party may, during the existence of any Default,

proceed under Chapter 9 of the Texas Uniform Commercial Code (the "**UCC**") as to all or any part of the Personalty and shall have and may exercise with respect to the Personalty all the rights, remedies and powers of a Secured Party under the UCC, including, without limitation, the right and power to sell at public or private sale or sales, or otherwise to dispose of, to lease, or to utilize the Personalty and any part or parts thereof, in any manner authorized or permitted under the UCC after default by a debtor and to apply the proceeds thereof toward payment of any reasonable costs, expenses and attorneys' fees and legal expenses thereby incurred by Secured Party and toward the payment of Debtor's obligations, including the Note and all other Indebtedness described in this instrument in any order or manner as Secured Party may elect. Among the rights of Secured Party during the existence of a Default, and without limitation, Secured Party shall have the right to take possession of the Personalty and to enter upon any premises where same may be situated for this purpose without being deemed guilty of trespass and without liability for damages thereby occasioned and to take any action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the Personalty for sale, lease, or other use or disposition as herein authorized. Debtor agrees that if any notice of sale required under the UCC is mailed, postage prepaid, to Debtor at the address shown herein at least ten (10) days before the time of the sale or disposition, the notice shall be deemed reasonable and shall fully satisfy any requirement for giving of the notice.

If a Default exists, and to the extent it may lawfully do so and without limiting any rights and/or privileges herein granted to Secured Party, Debtor agrees that Secured Party and/or the above Trustee and any Substitute Trustee, may dispose of any or all of the Personalty at the same time and place and after giving the same notice provided for in this Deed of Trust in connection with a nonjudicial foreclosure sale under the terms and conditions set forth in this Deed of Trust. In this connection, Debtor agrees that the sale may be conducted by the Trustee or the Substitute Trustee; that the sale of the Land and Improvements described in this Deed of Trust and the Personalty or any part thereof, may be sold separately and/or together; and that if the Land and Improvements described herein and the Personalty or any part thereof, are sold together, the Secured Party will not be obligated to allocate the consideration received as between the Land and Improvements and the Personalty.

C. Possession. Debtor hereby grants to Secured Party the right, at its option upon a Default to transfer at any time to itself or to its nominee the Personalty, or any part thereof and to receive the monies, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for Debtor's obligations or to apply it on the principal and interest or other amounts owing on any of Debtor's obligations, whether or not then due, in any order or manner as Secured Party may elect. All rights with respect to marshalling of assets of Debtor, including with respect to the Personalty, or to a sale in inverse order of alienation, are hereby waived.

D. Authority. Debtor hereby covenants, stipulates and agrees that all recitals in any instrument of assignment or any other instrument executed by Secured Party incident to the sale, transfer, assignment, lease or other disposition or utilization of the Personalty or any part thereof hereunder shall be prima facie evidence of the matters stated therein and all prerequisites of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto shall be rebuttably presumed to have been performed or to have occurred.

E. Assembly and Expenses. Debtor hereby covenants and agrees that Secured Party, during a Default, may require Debtor to assemble the Personalty and to make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. All reasonable expenses of retaking, holding, preparing for sale, lease, or other use or disposition, selling, leasing or otherwise using or disposing of the Personalty and the like that are incurred or paid by Secured Party as authorized or permitted hereunder, including also all reasonable attorneys' fees, legal expenses and costs, shall be added to the Indebtedness and Debtor shall be liable therefor.

F. Financing Statement. A carbon, photographic, or other reproduction of this Deed of Trust may be filed as a Financing Statement under the UCC between Debtor and Secured Party whose addresses are set forth below. Except for the security interest granted hereby in the Personalty, the security interests and rights in the Personalty granted to Senior Lender (if any), the security interest granted to the

Subordinate Lender or otherwise expressly stated in **EXHIBIT B** hereto, Debtor is owner and holder of the Personalty free of any adverse claim, security interest or encumbrance, and Debtor will defend the Personalty against all claims and demands of any person at any time claiming the same or any interest therein. With respect to the Personalty and the other Property covered hereby, Debtor has not heretofore signed any financing statement and no financing statement signed by Debtor is now on file in any public office except those statements, true and correct copies of which have been delivered to the Secured Party or in connection with the Senior Note (if any). So long as any amount remains unpaid on any Indebtedness described in this Deed of Trust, Debtor will not execute and there will not be filed in any public office any financing statement or statements affecting the Personalty other than financing statements in favor of the Senior Lender (if any) or Secured Party hereunder, unless the prior written specific consent and approval of Secured Party shall have first been obtained. Debtor authorizes Secured Party to file, in jurisdiction where this authorization will be given effect, a financing statement signed only by Secured Party covering the Personalty and at the request of Secured Party, Debtor will join Secured Party in executing one or more financing statements, pursuant to the UCC in form satisfactory to Secured Party and will pay the cost of filing the same or filing or recording this instrument as a financing statement, in all public offices at any time and from time to time whenever filing or recording of any financing statement or of this instrument is deemed by Secured Party to be necessary or desirable.

XI.

ADDRESSES

The addresses of Grantor and Beneficiary, are as follows:

Grantor:

APV REDEVELOPMENT CORPORATION
2640 Fountain View Drive
Houston, TX 77057

With a copy to:

COATS ROSE, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry J. Palmer

With a copy to:

2100 MEMORIAL REDEVELOPMENT, LP
c/o APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057

With a copy to:

NEW AFFORDABLE HOUSING PARTNERS, LLC and
SDK INTERESTS II, LLC
1718 Peachtree St., NW
Suite 684, South Tower
Atlanta, Georgia 30309
Attention:

With a copy to:

BANKS LAW FIRM, P.A.
2929 Allen Parkway, Suite 200

Houston, Texas 77019
Attention: Antoinette M. Jackson

Beneficiary: THE CITY OF HOUSTON
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

Trustee: THE CITY OF HOUSTON
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

Each party shall have the right to designate from time to time another address within the continental United States for purposes of this Deed of Trust by written notice to the other party. Notwithstanding the foregoing agreement to provide courtesy copies, such copies shall be a courtesy only and failure to provide such copies shall have no effect on the validity of a notice properly given to Grantor.

Notices under this Deed of Trust shall be effective in the case of utilization of the U.S. Mail Service, upon the earlier of (i) three days after deposit of such notice in the mail, return receipt requested or (ii) delivery. Notices sent by overnight courier services shall be effective one day after deposit with such service. All other notices shall be effective upon delivery. Notwithstanding the foregoing, any foreclosure notices shall be effective upon deposit with the U.S. Mail Service.

XII.

RESTRICTIVE COVENANTS

Grantor and Tenant have executed and filed of record or will execute and file of record a certain Restrictive Covenants dated of even date hereof (the "**Restrictive Covenants**") covering the Property. The Restrictive Covenants shall remain in full force and effect until expiration or termination in accordance with the provisions thereof and no invalidity, release or termination of this Deed of Trust shall operate to invalidate, release or terminate the Restrictive Covenants. The Restrictive Covenants shall not be deemed a "Loan Document" as such term is used herein or in any of the other Loan Documents.

XIII.

ENVIRONMENTAL MATTERS

A. Compliance with Laws. Grantor hereby represents, warrants, covenants and agrees to and with Beneficiary that:

(i) Grantor will not and will not permit any tenant or occupant of the Property to, generate, store, handle or otherwise deal with hazardous or toxic substances in, on, about or under the Property; and

(ii) Grantor has not at any time engaged in or permitted, nor, to the best of Grantor's knowledge after reasonable and prudent inquiry, which has consisted of the Phase

I report previously delivered to Beneficiary, has any current or former tenant, occupant or owner of the Property, or any portion thereof, engaged in or permitted any generation, storage, handling, dumping, discharge, disposal, spillage or leakage of any hazardous or toxic substances, at, on, or about the Property, or any portion thereof, except as disclosed on the Phase I report previously delivered to Beneficiary.

Notwithstanding the foregoing, Grantor shall be permitted to have such chemicals, materials and supplies on the Property which are normally used in connection with the prudent operation, use, maintenance and ownership of a multi-family unit apartment complex and which are used in compliance with environmental laws.

B. Indemnification. **GRANTOR HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND (WITH COUNSEL REASONABLY APPROVED BY BENEFICIARY) AND TO HOLD BENEFICIARY, ITS AGENTS, MEMBERS, OFFICERS, REPRESENTATIVES AND ITS EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, ADMINISTRATIVE PROCEEDINGS, JUDGMENTS, DAMAGES, PUNITIVE DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES (INCLUDING SUMS PAID IN SETTLEMENT OF CLAIMS), INTEREST OR LOSSES, INCLUDING REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND EXPENSES, OF ANY KIND OR NATURE (COLLECTIVELY, THE "COSTS") THAT ARISE DIRECTLY OR INDIRECTLY, FROM OR IN CONNECTION WITH THE PRESENCE, SUSPECTED PRESENCE, RELEASE OR SUSPECTED RELEASE (A "RELEASE") OF ANY HAZARDOUS OR TOXIC SUBSTANCE, FROM, ON, ABOUT, UNDER OR WITHIN THE PROPERTY, OR ANY PORTION THEREOF WHICH OCCURS DURING OR PRIOR TO SUCH TIME AS GRANTOR OWNS THE PROPERTY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, GRANTOR'S LIABILITY HEREUNDER, SUBJECT TO THE DE MINIMIS PROVISIONS OF ARTICLE XIII(A)(ii) ABOVE, SHALL NOT INCLUDE ANY LOSS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF BENEFICIARY OR RELEASE OF HAZARDOUS OR TOXIC SUBSTANCES BY BENEFICIARY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF BENEFICIARY AFTER BENEFICIARY HAS TAKEN POSSESSION OF THE PROPERTY.**

C. Remediation. If any investigation or monitoring of site conditions, or any cleanup, containment, restoration, removal or other remedial work (collectively, the "**remedial work**") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreements affecting the Property because of, or in connection with any release of hazardous or toxic substances, Grantor shall perform, or cause to be performed, the remedial work in compliance with such law, regulation, order or agreement. All remedial work shall be performed by one or more contractors selected by Grantor and approved in advance, in writing, by Beneficiary and under the supervision of a consulting engineer selected by Grantor and approved in advance, in writing, by Beneficiary. All costs of any remedial work shall be paid by Grantor, including, without limitation, the reasonable charges of contractor(s) and/or the consulting engineer and Beneficiary's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of any remedial work. If Grantor shall fail to timely commence or cause to be timely commenced, or fail to diligently prosecute to completion, any remedial work, then Beneficiary may, but shall not be required to, cause such remedial work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be "**Costs**" within the meaning of Subparagraph B above. All costs shall be due and payable upon demand therefor by Beneficiary, together with interest thereon at the Default Rate provided in the Note from the date such costs are paid by Beneficiary, until the same are refunded to Beneficiary and all such costs and the interest thereon shall be secured hereby.

D. Survival. Notwithstanding anything to the contrary contained herein, or in the Note or City Loan Agreement, the obligations of Grantor under this Paragraph XIII shall survive any assumption of the Indebtedness by a successor to Grantor (whether or not the assumption has been approved or disapproved, or whether or not Grantor was released from liability on the Indebtedness), foreclosure of this Deed of Trust (or transfer of the Property in lieu of foreclosure) and release or termination of this Deed of Trust.

XIV.

MISCELLANEOUS

A. No Waiver. No delay by Beneficiary in exercising any right, option or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Default.

B. Cumulative Remedy. All rights and remedies of Beneficiary under this Deed of Trust and any and all other instruments evidencing or securing the Indebtedness, are cumulative and concurrent and may be exercised singularly, successively, or concurrently.

C. No Release. The granting to Grantor or to any other person or party of any extension(s) of time for payment of all or any part of the Indebtedness or the performance of any covenant or agreement contained herein, or the taking of other or additional security for the payment of the whole or any part of the Indebtedness, or the releasing of any part of the security at any time held in connection with the Indebtedness, shall not in any way release Grantor or any other person or party obligated for the payment of the Indebtedness, or release or impair this Deed of Trust or any other security held in connection with the Indebtedness, except to the extent of the person, party or property expressly released in writing by Beneficiary.

D. Severability. If any provision in this Deed of Trust is invalid or unenforceable in whole or in part, this instrument shall in all other respects remain in full force and effect.

E. Successors and Assigns. All of the provisions hereof shall apply to, inure to the benefit of, and be binding upon Grantor and the successors and assigns (provided the foregoing shall not be construed as consent to any transfer by Grantor of the Property.

F. Further Assurances and Corrections. From time to time, at the request of Beneficiary, Grantor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's reasonable opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Beneficiary to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all reasonable costs connected with any of the foregoing.

G. Choice of Law. This Deed of Trust shall be performable and enforced in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas from time to time in effect except to the extent preempted by the United States federal law. Venue shall be appropriate in Harris County, as applicable.

H. Usury. In no event shall any provision of this Deed of Trust, the Note, the City Loan Agreement or any other instrument evidencing or securing the Indebtedness ever obligate Grantor to pay interest on the Note secured hereby at a rate greater than that permitted by law, or obligate Grantor to pay any taxes, assessments, charges, insurance premiums, or other amounts to the extent that the payments constitute interest under applicable law and when added to the interest payable on the Note secured

hereby, would be held to constitute the payment by Grantor of interest at a rate greater than that permitted by law; and this provision shall control over any provision to the contrary.

It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Note or the Indebtedness or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law ("Highest Lawful Rate"). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or the Indebtedness, or (iii) if any sum has been paid or Beneficiary will have received by reason of any voluntary prepayment by Grantor of the Note and/or the Indebtedness, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Highest Lawful Rate shall be automatically cancelled, ab initio, and all amounts in excess of the Highest Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Note and/or the Indebtedness (or, if the Note and all Indebtedness have been or would thereby be paid in full, refunded to Grantor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor, or crediting such excess interest against the Note and/or the Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged or received by Beneficiary for the use, forbearance or detention of any debt evidenced by the Note and/or the Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Indebtedness does not exceed the Highest Lawful Rate from time to time in effect and applicable to the Note and/or the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

I. Covenants Run with the Land. All obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Property until the lien of this Deed of Trust has been fully released by Beneficiary.

J. **JURY WAIVER. GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE, THE INDEBTEDNESS OR THIS DEED OF TRUST.**

K. Entire Agreement. **THIS DEED OF TRUST, TOGETHER WITH THE NOTE AND CITY LOAN AGREEMENT, THE OTHER LOAN DOCUMENTS, AND THE RESTRICTIVE COVENANTS CONSTITUTE A WRITTEN CITY LOAN AGREEMENT AS DEFINED IN SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE. THIS WRITTEN CITY LOAN AGREEMENT CONSTITUTES THE**

FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

L. Reserved.

M. Extended Low Income Housing Commitment. Pursuant to the terms of that Collateral Assignment of Note and Liens dated of even date herewith executed by Beneficiary for the benefit of the City (the "**Collateral Assignment**"), the City agreed that the liens securing the City Loan and evidence by this Deed of Trust and collaterally assigned to the City pursuant to the Collateral Assignment shall be subordinate to any extended low income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code)(the "Extended Use Agreement") recorded against the Land; provided that such Extended Use Agreement, by terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Land by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The City's Restrictive Covenants shall not be subordinate to any extended low income housing commitment as such term is defined in the Extended Use Agreement.

N. Limited Recourse. This Deed of Trust shall be subject to the limited recourse provisions of the Note.

[Signatures on following page]

Signature Page
Deed of Trust, Security Agreement and Financing Statement

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, Security Agreement and Financing Statement on the date set forth in the acknowledgments below but to be effective as of _____, 2021.

GRANTOR:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of **APV REDEVELOPMENT CORPORATION**, a Texas nonprofit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My commission expires:____.

ATTACHMENTS:
EXHIBIT "A" Land
EXHIBIT "B" Permitted Encumbrances

EXHIBIT A
PROPERTY DESCRIPTION

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

(TO BE ADJUSTED IF SURVEY CHANGES)

EXHIBIT B
Permitted Exceptions

(TO BE INSERTED FROM TITLE COMMITMENT)

ATTACHMENT C-2
TO LOAN AGREEMENT

LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

When recorded, return to:

THE CITY OF HOUSTON
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT
From

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

as Grantor

to

Tom McCasland,
as Trustee

for the benefit of

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation
as Beneficiary

LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

That in consideration of certain indebtedness hereinafter described, justly owing by **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership ("**Grantor**"), to **APV REDEVELOPMENT CORPORATION,** a Texas non-profit ("**Beneficiary**") and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other valuable consideration paid to the Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor has GRANTED, ASSIGNED, TRANSFERRED and CONVEYED, and does hereby GRANT, ASSIGN, TRANSFER and CONVEY unto **TOM MCCASLAND**, as trustee ("**Trustee**"), all of the following described property is collectively referred to herein as the "**Property**":

A. All of Grantor's right, title and interest, whether now or hereafter arising, in and to the real property situated in Harris County, Texas, described in **EXHIBIT A** hereto, together with all right, title and interest now and/or hereafter owned by Grantor, its successors and assigns, in the whole or any part of the above described real property and/or any street or road adjacent and/or contiguous to the above described real property including, without limitation, the the leasehold estate under the Ground Lease ("**Ground Lease**") dated ____, 2021 between the Grantor, as tenant, and the Beneficiary, as landlord ("**Land**").

B. All of Grantor's right, title and interest, whether now or hereafter arising, in and to all buildings and other improvements now or hereafter placed on the Land, as well as all appurtenances, betterments and additions thereto ("**Improvements**"); all and singular the rights, privileges, hereditaments and appurtenances in anywise incident or appurtenant to the Land and Improvements; and the rents, revenue, profits and income from the Land and Improvements.

C. All of Grantor's right, title and interest, whether now or hereafter arising, in and to any and all plumbing, electrical, heating, cooling and other equipment and all building materials and other goods of every type, kind and character that are now or hereafter situated upon the Land and which (i) are intended to be incorporated into the Improvements or (ii) are now, or hereafter become, fixtures attached to the Land or the Improvements; any and all other goods of every type, kind and character, including without limitation, all appliances, furniture, fixtures, inventory and equipment now owned or hereafter acquired by Grantor that are now or hereafter situated upon the Land (whether or not situated within or attached to the Improvements) and that facilitate the use and occupancy of the Improvements for the purpose for which they were or are to be constructed; all plans and specifications for the Improvements, all rights of Grantor under all existing and future leases, construction, maintenance and other contracts covering or relating to the Land or the Improvements, all tenants deposits made pursuant to or in connection with such leases, all rights of ingress and egress, easements, water and wastewater rights, and to the extent assignable, all licenses, permits, franchises, certificates, accounts, instruments, chattel paper, documents, agreements, contracts, including without limitation any agreements with the United States Department of Housing and Urban Development (to the extent assignable), and general intangibles, and all rights of Grantor in and to any development rights relating to the Land or the Improvements (including, without limitation, trade names and symbols used in connection therewith and any deposits with utility companies) and all other rights and privileges obtained in connection with, relating to or associated with the Land or the Improvements (collectively, the "**Personalty**") and all proceeds of the Personalty.

D. To the extent the assignment thereof is enforceable under applicable law, all of Grantor's right, title and interest, whether now or hereafter arising, in and to any tax refunds, including interest thereon, tax rebates, ad valorem tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property but excluding any Housing Tax Credits available pursuant to Section 42 of the Internal Revenue Code, as amended.

E. All of Grantor's right, title and interest in the proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages.

F. All of Grantor's right, title and interest, if any, in and to all substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores (collectively, "**Minerals**").

G. All funds of Grantor that may be deposited with Beneficiary at any time and from time to time for any purpose, which funds shall be deemed to be part of the Personalty for purposes hereof. In the event of a conflict between the terms and conditions of this instrument and the instrument under which Beneficiary holds any funds of Grantor, the terms and conditions of the latter instrument shall prevail.

TO HAVE AND TO HOLD the Property unto the Trustee and the assigns of the Trustee, and Grantor does hereby bind Grantor and the successors and assigns of Grantor, to WARRANT AND FOREVER DEFEND all and singular the Property and title thereto unto the Trustee and unto the assigns of the Trustee, against every person or party whomsoever claiming or to claim the same, or any part thereof, subject, however, to the permitted encumbrances set forth on **EXHIBIT B** attached hereto (the "**Permitted Encumbrances**") and the liens securing the Senior Note (if any).

I.

SECURITY FOR PERFORMANCE OF OBLIGATIONS

This conveyance is made in trust, however, to secure the performance of all covenants and agreements contained in this Leasehold Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") and that one certain Loan Agreement (the "**Loan Agreement**") executed or to be executed between Grantor and Beneficiary (which incorporates the terms of a certain other Loan Agreement (**"City Loan Agreement")** between Grantor, Beneficiary and the City of Houston relating to the Property) and the full and prompt payment when due (by lapse of time or otherwise), of the following indebtedness (the "**Indebtedness**"):

A. Loan. All sums, including principal, interest and attorneys' fees, called for in that certain promissory note (the **"Note"**) executed by Grantor payable to the order of Beneficiary, in the principal amount of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00), which Note evidences that certain loan from Beneficiary to the Grantor of the amount set forth in the Note (the **"Loan"**), and which Note bears interest at the rates therein stated and provides for acceleration of maturity should a Default (as defined in the Loan Agreement) occur.

B. Other Sums. All other sums owing by Grantor to Beneficiary or other holder(s) of any part of the Indebtedness or becoming due under the Loan Agreement or under the City Loan Agreement or any of the Loan Documents. (This Deed of Trust and all other instruments now or hereafter evidencing, governing or securing any part of the Indebtedness are hereinafter collectively referred to as the "**Loan Documents**").

C. Other Obligations. This Deed of Trust also secures Grantor's performance under certain Restrictive Covenants with respect to the Property executed by Grantor in connection with the City Loan Agreement.

II.

PAYMENT OF THE INDEBTEDNESS; DEFAULT; ENFORCEMENT OF TRUST

A. Payments. If the Indebtedness is fully paid and if all of Grantor's covenants and agreements herein and in the Loan Agreement (including the incorporated provisions of the City Loan Agreement and the other Loan Documents are fully kept and performed, and if no Default then exists, then this conveyance shall thereupon become of no further force and effect and shall be released by Beneficiary or other holder(s) of the Indebtedness upon the written request and at the expense of Grantor.

B. Enforcement. But if any Default (as defined in the Loan Agreement) exists beyond any applicable notice and cure period, the whole of the Indebtedness shall at the option of Beneficiary, without further notice to Grantor or any other person, which notice is hereby waived, become immediately due and payable and thereupon, or at any time thereafter that the Indebtedness or any part thereof remains unpaid, it shall be the duty of the Trustee, or the Substitute Trustee, as hereinafter defined, at the request of Beneficiary, or the holder(s) of the Indebtedness, which request shall be presumed, to enforce this Trust and to sell as an entirety, or in parcels, by one sale or by several sales, held at one time or at different times, as the Trustee acting may elect (all rights to a marshaling of Grantor's assets, including Property, or to a sale in inverse order of alienation, being hereby expressly waived by Grantor), the Property in the county in which the Property, or a part of the Property to be sold, is situated (the "**County**") at such area at the courthouse designated by the Commissioner's Court of the County as the area where sales are to take place, or if no area is designated, at the door of the County Courthouse, each sale to be made on the first Tuesday of a calendar month between the hours of 10:00 A.M. and 4:00 P.M. to the highest bidder for cash at public auction, after both posting or causing to be posted written or printed notice of the time (including the earliest time at which the sale will occur), place, and term of sale at the door of the Courthouse of the County and filing or causing to be filed a copy of the notice in the Office of the County Clerk of the County, for at least twenty-one (21) days preceding the day of sale, and to execute and to deliver to the purchaser(s) at each such sale proper conveyance(s) of the property interest sold, with general warranty of title binding upon Grantor and the successors and assigns of Grantor; or Beneficiary or other holder(s) of the Indebtedness may foreclose or cause to be foreclosed the Lien of this Deed of Trust, in whole or in part, through judicial foreclosure or in any manner as may at any time be authorized under the statutes of the State of Texas. In addition, the holder(s) of the Indebtedness to which the power is related shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on each person obligated to pay the Indebtedness according to the records of the holder(s). Service of the notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of the holder(s) of the Indebtedness, in a post office or official depository under the care and custody of the United States Postal Service. The Affidavit of any person having knowledge of the facts to the effect that service was completed shall be prima facie evidence of the fact of service. No notice of the sale or sales other than that herein provided for need be given to Grantor or any other person or party, and any other notice is hereby waived. Beneficiary or other holder(s) of the Indebtedness shall have the right to become the purchaser at any sale to the same extent as any other party, being the highest bidder, and in lieu of paying cash may credit the amount of the bid upon the Indebtedness up to the full amount of the Indebtedness then unpaid.

C. Proceeds. The Trustee acting shall apply the proceeds arising from each sale, first, to pay all reasonable expenses of the sale actually incurred, second, to reimburse Beneficiary for any reasonable expenses incurred by Beneficiary in protecting, administering or operating the Property after the occurrence of the applicable Default and prior to the foreclosure sale and third, to the payment of the Indebtedness (including all principal, interest and reasonable attorneys' fees for legal work performed owing as part of the Indebtedness). The proceeds of each sale paid to Beneficiary may be applied by Beneficiary on the Indebtedness in any order and manner as Beneficiary may elect. Any surplus funds from the foreclosure sale or sales hereunder shall be paid to Grantor or the person(s) lawfully entitled thereto.

III.

UNMATURED INDEBTEDNESS

If any Default exists beyond any applicable cure periods, Beneficiary or other holder(s) thereof shall, in addition to any remedies available to Beneficiary at law or in equity, have the option to proceed with foreclosure in satisfaction of such item or items, either through the courts or by directing the Trustee, or the Substitute Trustee, as hereinafter provided for, to proceed as if under a foreclosure, conducting the sale as herein provided and without declaring the whole debt due, and if a sale is made because of such Default, the sale may be made subject to the unmatured part of the Indebtedness, but as to the unmatured part of the Indebtedness, this Deed of Trust shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness, it being the purpose hereof to provide for a foreclosure and sale of the Property, in whole or in part, for any matured portion of the Indebtedness without exhausting the power of foreclosure and the power to sell the Property, in whole or in part, for any other part of the Indebtedness subsequently maturing.

IV.

SUBSTITUTE TRUSTEE

In case of the resignation of the Trustee, or the inability (through death or otherwise), refusal or failure of the Trustee to act, or at the option of Beneficiary or the holder(s) of the Indebtedness for any other reason (which reason need not be stated), a substitute trustee ("**Substitute Trustee**") may be named, constituted and appointed by Beneficiary or the holder(s) of the Indebtedness, without other formality than an appointment and designation in writing; the appointment and designation shall be full evidence of the right and authority to make the same and of all facts therein recited; and this conveyance shall vest in the Substitute Trustee the title, power and duties herein conferred on the Trustee originally named herein and the conveyance of the Substitute Trustee to the purchaser(s) at any sale shall be equally valid and effective. The right to appoint a Substitute Trustee shall exist as often and whenever from any of said causes, the Trustee, original or Substitute, resigns, or cannot, will not, or does not act, or Beneficiary or the holder(s) of a majority of the Indebtedness desire to appoint a new Trustee. No bond shall ever be required of the Trustee, original or Substitute. The recitals in any conveyance made by the Trustee, original or Substitute, shall be accepted and construed in court and elsewhere as prima facie evidence and proof of the facts recited and no other proof shall be required as to the request by Beneficiary or the holder(s) of a majority of the Indebtedness to the Trustee to enforce this Trust, or as to the notice of or holding of the sale, or as to any particulars thereof, or as to the resignation of the Trustee, original or Substitute, or as to the inability, refusal or failure of the Trustee, original or Substitute, to act or as to the election of Beneficiary or the holder(s) of a majority of the Indebtedness to appoint a new Trustee, or as to appointment of a Substitute Trustee, and all prerequisites of the sale shall be presumed to have been performed; and each sale made under the powers herein granted shall be a perpetual bar against Grantor and the successors and assigns of Grantor.

V.

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF GRANTOR

For the purpose of better securing to Beneficiary the payment of the Indebtedness, Grantor represents, warrants and covenants to Beneficiary as follows:

A. Title, Authority, and Performance under Leases. At the time of the execution and delivery of this Deed of Trust, the Beneficiary is the sole and lawful owner of the Land in fee simple and the Grantor holds a leasehold estate in the Property by virtue of the Ground Lease, and Grantor has the authority to execute this Deed of Trust. The Property is free from all encumbrances and charges whatsoever except for the liens securing the Senior Note (if any and as defined in the City Loan Agreement) and the Permitted Encumbrances. No assignments or pledges are currently in effect with respect to any leases of or rentals or income from the Property except for assignments and/or pledges to Beneficiary and those expressly

stated in **EXHIBIT B** and those securing the Senior Note (if any), and until the Indebtedness is fully paid, at which time this Deed of Trust will be released. Grantor shall not make any additional assignment or pledge thereof without Beneficiary's prior written consent. In addition, Grantor warrants that (a) the Ground Lease is in full force and effect; (b) there are no defaults under the Ground Lease and no event has occurred but for the passage of time or notice or both, would constitute a default under the Ground Lease; and (c) all rents and other sums due under the Ground Lease have been paid in full.

B. Tax and Insurance Escrow. Unless the Grantor is already required to maintain an escrow account with the Senior Lender (If any and as defined in the City Loan Agreement) upon written request by Beneficiary, the Grantor agrees to deposit with Beneficiary on a monthly basis, or at other intervals as specified, a sum that shall be sufficient to pay taxes, assessments, charges, and insurance premiums as they become due, all as reasonably estimated by Beneficiary, which sum shall be held by Beneficiary (or by a banking institution selected by Beneficiary whose funds are insured by a federal agency or instrumentality) in trust to pay taxes, assessments, charges and premiums, but which shall not bear interest and may be commingled with other funds. If at any time the funds so held by (or on behalf of) Beneficiary are insufficient to pay any tax, assessment, charge or insurance premium, the Grantor shall, upon receipt of notice, deposit with Beneficiary (or such banking institution), all additional funds as are necessary to remove the deficiency. If the Indebtedness is for any reason declared immediately due and payable, funds held by (or on behalf of) Beneficiary for payment of taxes, assessments, charges or premiums as herein provided may, at Beneficiary's election, be applied on the Indebtedness in any manner as Beneficiary so elects. In the event that the Grantor is escrowing with Senior Lender (if any) a sum for payment of taxes, assessments, charges and insurance premiums and such amount is sufficient to fully discharge such taxes, assessments, charges and insurance premiums, Beneficiary agrees not to require an additional escrow deposit under this paragraph. In the event that Beneficiary does not require the escrow deposits described in the paragraph, the Grantor shall provide Beneficiary with written evidence that (i) all applicable taxes and assessments have been paid at least thirty (30) days prior to delinquency and (ii) all insurance premiums have been paid thirty (30) days before the renewal date of the applicable policies. The Grantor shall duly pay and discharge, or cause to be paid and discharged, all taxes, assessments, charges, and insurance premiums before they become past due. The Property is currently exempt from all ad valorem taxes and has been exempt from said taxes in the five (5) years preceding the effective date of this Deed of Trust. The Grantor expects that the Land or Property shall continue to receive the same ad valorem exemption upon final closing.

C. Insurance. The Grantor shall, prior to or concurrently with the execution of this Deed of Trust, deliver to Beneficiary all of the following insurance policies together with evidence of such other insurance coverage as required pursuant to the Loan Agreement, accompanied by paid premium receipts evidencing payment in full of the required premiums for at least the first full year of coverage:

(i) fire insurance with extended coverage and standard Beneficiary and replacement cost endorsement for the full insurable value of the insurable portion of the Property, but in no event for an amount less than the amount of the Note (90% shall be acceptable co-insurance rates for fire insurance); and

(ii) public liability insurance in the amount of $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate for a twelve (12) month policy period. Each renewal policy shall be delivered to Beneficiary not less than thirty (30) days before the termination of the prior policy and with each policy there shall be delivered to Beneficiary a receipt showing payment of the premium therefor.

Upon request, the Grantor shall also carry additional insurance or additional reasonable amounts of insurance covering the Grantor or the Property as Beneficiary shall reasonably require, insuring against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in the region where the Property is located and shall further comply with the insurance requirements of the Ground Lease.

If the Property or any part thereof has been or at any time during the term of this Deed of Trust or any extension or renewal thereof is designated as a flood-prone or flood-risk area pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law, the Grantor shall obtain flood insurance in such total amounts as Beneficiary may from time to time require and shall otherwise comply with the requirements of the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, or any successor law.

All insurance required under this Deed of Trust and the Loan Agreement shall be fully paid for, non-assessable, and such policies shall contain such provisions, endorsements, and expiration dates as Beneficiary shall reasonably require. Such policies shall be issued by insurance companies authorized and licensed to transact business in the State of Texas with ratings acceptable to Beneficiary in its sole and absolute discretion and shall name Beneficiary as an additional insured.

D. Operations. The Grantor will abstain from and not permit the commission of waste in or about the Property, will maintain the Property in good operating condition and repair at all times, ordinary wear and tear and insured casualty excepted, will not remove or demolish the buildings or other improvements now or hereafter constituting a part of the Property, or alter the design or structural character of any buildings or improvements unless Beneficiary shall first consent thereto in writing, which consent shall be granted or denied in Beneficiary's reasonable discretion, and will comply with the Ground Lease and all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property or the use thereof, which consent shall not be unreasonably withheld, delayed or conditioned. Grantor will not seek or acquiesce in a zoning reclassification of all or any portion of the Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Property, without Beneficiary's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

E. Obligations Under Other Loan Documents. The Grantor hereby agrees to comply with and perform all of its obligations under the other Loan Documents and Grantor agrees to be bound by the representations, warranties and covenants made by such Grantor contained in the Loan Documents. All of representations, warranties and covenants contained in the other Loan Documents are hereby fully incorporated herein.

F. Obligations under Ground Lease. (i) Grantor shall promptly and fully keep, observe, perform or cause to be kept, observed and performed all of the material terms, covenants, provisions and agreements imposed upon or assumed by Grantor under the Ground Lease including any amendments or supplements thereto, and Grantor shall not do or fail to do or permit or fail to permit to be done, any act or thing, the doing or omission of which will give the Beneficiary a right to terminate the Ground Lease. Grantor shall not under any circumstances modify, cancel, amend or terminate the Ground Lease, without Beneficiary's and the City's prior written consent, and any attempted modification, cancellation, amendment or termination of the Ground Lease without such consent shall be void and of no force or effect whatsoever; (ii) If Grantor shall, in any manner, fail to comply with subsection (i) above, Grantor covenants and agrees that Beneficiary may (but shall not be obligated to) take, upon five (5) business days' written notice to Grantor (or upon lesser notice, or without notice, if Beneficiary reasonably deems that the same is required to protect its interest in the Property), any action that Beneficiary shall reasonably deem necessary or desirable to keep, observe and perform or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Property and take all action thereon as may be necessary therefor, or to prevent or cure any default by either Grantor in the performance of or compliance with any of such Grantor's covenants or obligations under the Ground Lease. Grantor shall promptly deliver to Beneficiary a copy of any notice relating to defaults received under the Ground Lease and allow Beneficiary the right to cure such default for a period of ninety (90) days. Beneficiary may expend such sums of money as are reasonable and necessary for any such purposes, and the Grantor hereby covenants and agrees to pay to Beneficiary, immediately upon demand, all sums so reasonably expended by Beneficiary, together with interest thereon

from the date of such payment at the Default Rate, and until so paid by the Grantor, all sums so reasonable expended by Beneficiary and the interest thereon shall be added to the obligations secured by the lien and legal operation and effect of this Deed of Trust.

G. Casualty and Condemnation Proceeds. Subject to the terms of the Loan Agreement and the Intercreditor Agreement (as defined below), in the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, the Grantor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Indebtedness in balance and rebuild the affected portion of the Property in a manner that provides adequate security to Beneficiary for repayment of the Indebtedness or if such proceeds are insufficient then the Grantor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no Default then exists under the Loan Documents that will not be cured by rebuilding the affected portion of the Property. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Indebtedness in a manner that provides adequate security to Beneficiary for repayment of the remaining balance of the Indebtedness.

H. Failure to Pay. All taxes and any assessments that are due and payable affecting the Property shall be paid and discharged in full prior to execution and delivery of this Deed of Trust, or as they subsequently become due and payable and prior to delinquency. If the Grantor fails to pay any tax, assessment, charge or insurance premium affecting the Property in accordance with the terms of this Deed of Trust, Beneficiary may, at its option, pay the same, or if any Grantor fails to perform any of Grantor's covenants or agreements set forth in this Deed of Trust in accordance with the terms hereof, Beneficiary may, at its option, correct or cause to be corrected the same and pay any sums in connection therewith as Beneficiary shall determine to be necessary or advisable, and all taxes, assessments, charges, insurance premiums and sums paid by Beneficiary in connection with such matters (collectively, whether one or more, an "**Assessment**") shall be immediately repayable by the Grantor to Beneficiary, together with interest on each amount at the default rate provided in the Note from the date the sum is paid by Beneficiary, until the same is refunded to Beneficiary and all such amounts and interest thereon, shall be secured hereby as part of the Indebtedness. Notwithstanding the foregoing, Grantor shall have the right to object and protest to ad valorem taxes on the Property in good faith and with due diligence provided that (i) no Default exists under this Deed of Trust or any of the other Loan Documents, (ii) Grantor gives Beneficiary prior written notice of its intent to contest an Assessment; (iii) Grantor demonstrates to Beneficiary's reasonable satisfaction that (A) the Property will not be sold to satisfy the Assessment prior to the final determination of the legal proceedings, (B) Grantor has taken such actions as are required or permitted to accomplish a stay of any such sale, and (C) Grantor has either (1) furnished a bond or surety (satisfactory to Beneficiary in form and amount) sufficient to prevent a sale of the Property or (2) at Beneficiary's option, deposited one hundred fifty percent (150%) of the full amount necessary to pay any unpaid portion of any Assessment with Beneficiary; and (iv) such proceeding shall be permitted under any other instrument to which Grantor or the Property is subject (whether superior or inferior to this Instrument).

I. Title Litigation. Subject to title insurance coverage, in case of any litigation involving the title to any part of the Property, or the validity of this Deed of Trust, Beneficiary may be represented in the litigation through attorneys of its own selection and the Grantor shall, upon demand, promptly reimburse Beneficiary for all court costs and reasonable attorneys' fees incurred by Beneficiary in defending and/or protecting its rights in any litigation.

J. Default. Subject to applicable notice, grace, and cure provisions and the other terms of this Deed of Trust and the other Loan Documents, if a Default extends beyond any applicable notice and cure period (as defined in the Loan Agreement), the whole of the Indebtedness, at the option of Beneficiary, shall become immediately due and payable, without further notice or demand.

K. Tenancy at Sufferance. Following any sale of the Property, or any part thereof, under the provisions of this Deed of Trust, and to the extent permissible under applicable law, Grantor shall be obligated to immediately vacate the premises and prior to such vacation shall be a tenant at sufferance of the purchaser of the Property sold and shall be subject to eviction in an action of forcible detainer; provided, the provisions of this Subparagraph K shall be subject to any agreements made in writing by Beneficiary with reference to any existing and/or future leases; provided, further, to the extent permitted under applicable law, the purchaser at any foreclosure sale shall have the option to affirm any then existing leases or tenancies or otherwise to succeed to the rights of Grantor thereunder.

L. Subrogation. To the extent that any of the Indebtedness represents funds utilized to satisfy any outstanding Indebtedness or obligations secured by liens, rights, or claims against the Property or any part thereof, Beneficiary shall be subrogated to any and all liens, rights, superior titles and equities owned or claimed by the holder of any outstanding indebtedness or obligation so satisfied, however remote, regardless of whether the liens, rights, superior titles and equities are assigned to Beneficiary or released by the holder(s) thereof.

M. Homestead Disclaimer. Grantor represents and covenants that the Property forms no part of any property owned, used, or claimed by Grantor as a business or residential homestead, or as exempt from forced sale under the laws of the State of Texas and disclaims and renounces all and every such claim thereto.

N. Additional Transfers and Encumbrances. Beneficiary shall have the right to declare the Indebtedness secured hereby immediately due and payable in the event the Grantor sells, transfers, assigns, or conveys its interest, whether voluntarily or involuntarily, in the Property, or any part thereof, without the prior written consent of Beneficiary, such consent not to be unreasonably withheld, delayed or conditioned or in the event any junior or subordinate mortgage, lien, deed of trust, or other encumbrance is placed upon the Property without the prior written consent of Beneficiary, provided the foregoing shall not prohibit the removal of worn or obsolete Personalty that is replaced with new items of the same or similar quality. If Beneficiary consents to the sale, transfer, assignment, or conveyance of Grantor's interest in the Property, or any part thereof, and waives in writing its right to accelerate the Indebtedness secured hereby as provided in this Subparagraph N, Beneficiary may require that the transferee assume all the obligations of Grantor under this Deed of Trust, the Loan Agreement and the Note in a form reasonably acceptable to Beneficiary and its legal counsel. For purposes of this Subparagraph N, "transfer" of the Property includes any direct or indirect transfer of any beneficial ownership in Grantor (except as allowed by the City Loan Agreement) or the general partner or managing member of Grantor except to the extent that such transfer is permitted under the City Loan Agreement (including the incorporated provisions of the City Loan Agreement) after satisfaction of all requirements for such transfer including the consent of the City of Houston (the "**City**"), if required for such transfer.

Notwithstanding anything to the contrary contained in this Deed of Trust or the other Loan Documents, the removal and/or replacement of the Grantor's general partner for cause in accordance with the Grantor's partnership agreement shall not require the consent of the Beneficiary or the Trustee, shall not constitute a default or Default under this Deed of Trust or the Loan Documents or accelerate or give the Beneficiary the right to accelerate the maturity of the Loan. The consent of the Beneficiary and the City shall be required for the appointment of a new general partner, but if the Grantor's Tax Credit Investor (as defined in the Loan Agreement) exercises its right to remove the Grantor's general partner for cause, Beneficiary will not unreasonably withhold its consent to the substitute general partner; provided however, the consent of neither the Trustee nor the Beneficiary shall be required if the substitute general partner is an affiliate of such Tax Credit Investor. The substitute general partner shall assume all of the rights and obligations of the removed general partner of the Grantor hereunder.

O. No Reliance on Beneficiary. Grantor is experienced in the ownership and operation of properties similar to the Property, and Beneficiary is relying solely upon Grantor's expertise and business plan in connection with the construction of the Improvements and ownership and operation of the Property.

Grantor is not relying on Beneficiary's expertise or business acumen in connection with the Property or in connection with the construction of the Improvements.

P. No Litigation. Except as disclosed in writing to Beneficiary, there are no (i) actions, suits, or proceedings, at law or in equity, before any Governmental Authority (as defined in the Loan Agreement) or arbitrator pending or threatened against or affecting Grantor, any guarantor, or involving the Property, (ii) outstanding or unpaid judgments against Grantor or the Property, or (iii) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

Q. Payment for Labor and Materials. The Grantor will timely pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Property (which shall be deemed an Assessment on the Property) and never permit to exist in respect of the Property or any part thereof any unbonded lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event, the Grantor shall never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Encumbrances and the liens securing the Senior Note (if any). In the event that Grantor becomes aware that such lien has been recorded against the Property, the Grantor shall have such lien released within thirty (30) days. If the Grantor fails to pay or bond around any bills for labor, materials, and specifically fabricated materials incurred in connection with the Property, Beneficiary shall have the rights set forth in Section V.H for the Grantor's failure to pay any Assessment, as well as the other rights and remedies provided under this Deed of Trust.

R. Tax on Deed of Trust. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, the Grantor will pay when due all such taxes, provided that if such law as enacted makes it unlawful for the Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for the Grantor to pay such taxes, then the Grantor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Beneficiary.

S. ERISA. If and to the extent that Grantor is obligated under any plan governed by or subject to the Employee Retirement Income Security Act, as amended (**"ERISA"**), Grantor shall fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA and the Internal Revenue Code, as amended (**"IRC"**). Furthermore, Grantor shall comply in all material respects with any and all applicable provisions of ERISA and the IRC and will not incur or permit to exist any unfunded liabilities to the Pension Benefit Guaranty Corporation or to such plan under ERISA or the IRC.

T. Disclosures. If at any time Grantor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which are likely to have a material adverse effect on the Property or Grantor's financial condition, Grantor shall promptly notify Beneficiary of the existence or occurrence thereof and of Grantor's opinion as to what effect such may have on the Property or Grantor. Grantor shall also give prompt notice to Beneficiary of (i) the serious illness or death of any principal or key employee of Grantor, (ii) any litigation or dispute, threatened or pending against or affecting Grantor, the Property or any guarantor which could have a material adverse effect on the Property or the financial condition or business of any of the aforementioned parties, (iii) any Default, (iv) any default by Grantor beyond all applicable notice, grace, and cure periods or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party, and (v) any change in the character of Grantor's business as it existed on the date hereof.

VI.

CAPTIONS

The captions contained in this Deed of Trust are for convenience only and shall not be taken into account in determining the meaning of any provision f this Deed of Trust.

VII.

ASSIGNMENT OF LEASES

As further security for the payment of the Indebtedness, and subject to the rights of senior lienholders (if any), Grantor hereby assigns to Beneficiary, its successors and assigns, all leases, whether now in existence or hereafter created, covering all or any portion of the Property (including its interest in the Ground Lease) together with all rents to become due under each such lease, subject, however, to any prior assignment in connection with senior indebtedness (if any). For so long as no Default exists, Grantor may collect the rents, but not more than one (1) month in advance, in the ordinary course of business, unless otherwise provided by the express terms of the leases and approved by Beneficiary. In the event of any Default and at any and all times during the continuance thereof, in addition to all other rights and remedies of Beneficiary, Beneficiary shall have the exclusive right and power (but not the obligation) to enter upon and take possession of the Property or any part thereof, to rent or re-rent the same, either in the name of Beneficiary or Grantor, to receive all rents, revenues, profits, or other income from the Property and to apply all amounts received first, to the costs and expenses incurred by Beneficiary in protecting and operating the Property and next, to the payment of the Indebtedness in any manner and in any order of priority as Beneficiary shall determine. This action by Beneficiary shall not operate as a waiver of the Default, or as an affirmance of any lease or of the rights of any tenant of title to that part of the Property covered by the lease or held by the tenant, should the Property, or any part thereof, be acquired by Beneficiary or other purchaser at a foreclosure sale. The right of Beneficiary to receive all rents, revenues, profits, or other income from the Property during the continuance of any Default shall be applicable whether Beneficiary has entered upon or taken possession of the Property, or has otherwise attempted to exercise its rights hereunder and if any rents, revenues, profits, or other income are paid to or received by Grantor, Grantor shall immediately pay the same to Beneficiary, without the necessity of any request or demand therefor. Grantor agrees at any time and from time to time until the indebtedness is paid in full to execute and to deliver any additional assignments of leases and/or rents, security agreements and other instruments as Beneficiary shall from time to time reasonably require, provided such instruments do not increase Grantor's obligations (except as may be contemplated by the Loan Documents) or decrease Grantor's rights under the Loan Documents. The substance, form, execution and delivery of additional assignments of leases and/or rents, security agreements and other instruments shall be reasonably satisfactory to Beneficiary.

VIII.

PERSONALTY

This Deed of Trust covers and includes, without limitation, Grantor's interest in the Personalty hereinabove described.

IX.

USE OF PERSONALTY

Grantor represents that all Personalty is property for business use and is not consumer goods. Grantor further covenants that there are and shall be no conditional sales contracts that cover any of the Personalty.

X.

SECURITY INTEREST IN PERSONALTY

Without limiting any of the provisions of this instrument, Grantor, as referred to in this paragraph as "**Debtor**," expressly does the following:

A. Grant. Debtor hereby grants unto Beneficiary and its successors and assigns, described herein as Secured Party, and referred to in this paragraph as "**Secured Party**", a security interest in Debtor's interest in the Personalty (subject to the Permitted Encumbrances and the security interests and rights granted to Senior Lender(if any).

B. UCC Remedies. Debtor agrees, in addition to any other remedies granted in this instrument to Secured Party or the Trustee, that Secured Party may, during the existence of any Default, proceed under Chapter 9 of the Texas Uniform Commercial Code (the "**UCC**") as to all or any part of the Personalty and shall have and may exercise with respect to the Personalty all the rights, remedies and powers of a Secured Party under the UCC, including, without limitation, the right and power to sell at public or private sale or sales, or otherwise to dispose of, to lease, or to utilize the Personalty and any part or parts thereof, in any manner authorized or permitted under the UCC after default by a debtor and to apply the proceeds thereof toward payment of any reasonable costs, expenses and attorneys' fees and legal expenses thereby incurred by Secured Party and toward the payment of Debtor's obligations, including the Note and all other Indebtedness described in this instrument in any order or manner as Secured Party may elect. Among the rights of Secured Party during the existence of a Default, and without limitation, Secured Party shall have the right to take possession of the Personalty and to enter upon any premises where same may be situated for this purpose without being deemed guilty of trespass and without liability for damages thereby occasioned and to take any action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the Personalty for sale, lease, or other use or disposition as herein authorized. Debtor agrees that if any notice of sale required under the UCC is mailed, postage prepaid, to Debtor at the address shown herein at least ten (10) days before the time of the sale or disposition, the notice shall be deemed reasonable and shall fully satisfy any requirement for giving of the notice.

If a Default exists, and to the extent it may lawfully do so and without limiting any rights and/or privileges herein granted to Secured Party, Debtor agrees that Secured Party and/or the above Trustee and any Substitute Trustee, may dispose of any or all of the Personalty at the same time and place and after giving the same notice provided for in this Deed of Trust in connection with a nonjudicial foreclosure sale under the terms and conditions set forth in this Deed of Trust. In this connection, Debtor agrees that the sale may be conducted by the Trustee or the Substitute Trustee; that the sale of the Land and Improvements described in this Deed of Trust and the Personalty or any part thereof, may be sold separately and/or together; and that if the Land and Improvements described herein and the Personalty or any part thereof, are sold together, the Secured Party will not be obligated to allocate the consideration received as between the Land and Improvements and the Personalty.

C. Possession. Debtor hereby grants to Secured Party the right, at its option upon a Default to transfer at any time to itself or to its nominee the Personalty, or any part thereof and to receive the monies, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for Debtor's obligations or to apply it on the principal and interest or other amounts owing on any of Debtor's obligations, whether or not then due, in any order or manner as Secured Party may elect. All rights with respect to marshalling of assets of Debtor, including with respect to the Personalty, or to a sale in inverse order of alienation, are hereby waived.

D. Authority. Debtor hereby covenants, stipulates and agrees that all recitals in any instrument of assignment or any other instrument executed by Secured Party incident to the sale, transfer, assignment, lease or other disposition or utilization of the Personalty or any part thereof hereunder shall be prima facie evidence of the matters stated therein and all prerequisites of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto shall be rebuttably presumed to have been performed or to have occurred.

E. Assembly and Expenses. Debtor hereby covenants and agrees that Secured Party, during a Default, may require Debtor to assemble the Personalty and to make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. All reasonable expenses of retaking, holding, preparing for sale, lease, or other use or disposition, selling, leasing or otherwise using or disposing of the Personalty and the like that are incurred or paid by Secured Party as

authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to the Indebtedness and Debtor shall be liable therefor.

F. Financing Statement. A carbon, photographic, or other reproduction of this Deed of Trust may be filed as a Financing Statement under the UCC between Debtor and Secured Party whose addresses are set forth below. Except for the security interest granted hereby in the Personalty, the security interests and rights in the Personalty granted to Senior Lender (if any), the security interest granted to the Subordinate Lender or otherwise expressly stated in **EXHIBIT B** hereto, Debtor is owner and holder of the Personalty free of any adverse claim, security interest or encumbrance, and Debtor will defend the Personalty against all claims and demands of any person at any time claiming the same or any interest therein. Debtor has not heretofore signed any financing statement and no financing statement signed by Debtor is now on file in any public office except those statements, true and correct copies of which have been delivered to the Secured Party or in connection with the Senior Note (if any). So long as any amount remains unpaid on any Indebtedness described in this Deed of Trust, Debtor will not execute and there will not be filed in any public office any financing statement or statements affecting the Personalty other than financing statements in favor of the Senior Lender or Secured Party (if any) hereunder, unless the prior written specific consent and approval of Secured Party shall have first been obtained. Debtor authorizes Secured Party to file, in jurisdiction where this authorization will be given effect, a financing statement signed only by Secured Party covering the Personalty and at the request of Secured Party, Debtor will join Secured Party in executing one or more financing statements, pursuant to the UCC in form satisfactory to Secured Party and will pay the cost of filing the same or filing or recording this instrument as a financing statement, in all public offices at any time and from time to time whenever filing or recording of any financing statement or of this instrument is deemed by Secured Party to be necessary or desirable.

XI.

ADDRESSES

The addresses of Grantor and Beneficiary, are as follows:

Grantor:

2100 MEMORIAL REDEVELOPMENT, LP
c/o APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057

With a copy to:

NEW AFFORDABLE HOUSING PARTNERS, LLC and
SDK INTERESTS II, LLC
1718 Peachtree St., NW
Suite 684, South Tower
Atlanta, Georgia 30309
Attention:

With a copy to:

BANKS LAW FIRM, P.A.
2929 Allen Parkway, Suite 200
Houston, Texas 77019
Attention: Antoinette M. Jackson

Beneficiary:

APV REDEVELOPMENT CORPORATION
2640 Fountain View Drive
Houston, TX 77057

With a copy to:

COATS ROSE, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry J. Palmer

With a copy to:

HOUSTON HOUSING AUTHORITY
2640 Fountain View Drive
Houston, TX 77057

With a copy to:

COATS ROSE, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry J. Palmer

Trustee: THE CITY OF HOUSTON
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

Each party shall have the right to designate from time to time another address within the continental United States for purposes of this Deed of Trust by written notice to the other party. Notwithstanding the foregoing agreement to provide courtesy copies, such copies shall be a courtesy only and failure to provide such copies shall have no effect on the validity of a notice properly given to Grantor.

Notices under this Deed of Trust shall be effective in the case of utilization of the U.S. Mail Service, upon the earlier of (i) three days after deposit of such notice in the mail, return receipt requested or (ii) delivery. Notices sent by overnight courier services shall be effective one day after deposit with such service. All other notices shall be effective upon delivery. Notwithstanding the foregoing, any foreclosure notices shall be effective upon deposit with the U.S. Mail Service.

XII.

RESTRICTIVE COVENANTS

Grantor and the Beneficiary have executed and filed of record or will execute and file of record a certain Restrictive Covenants dated of even date hereof (the "**Restrictive Covenants**") covering the Property. The Restrictive Covenants shall remain in full force and effect until expiration or termination in accordance with the provisions thereof and no invalidity, release or termination of this Deed of Trust shall operate to invalidate, release or terminate the Restrictive Covenants. The Restrictive Covenants shall not be deemed a "Loan Document" as such term is used herein or in any of the other Loan Documents.

XIII.

ENVIRONMENTAL MATTERS

A. Compliance with Laws. Grantor hereby represents, warrants, covenants and agrees to and with Beneficiary that:

(i) Grantor will not and will not permit any tenant or occupant of the Property to, generate, store, handle or otherwise deal with hazardous or toxic substances in, on, about or under the Property; and

(ii) Grantor has not at any time engaged in or permitted, nor, to the best of Grantor's knowledge after reasonable and prudent inquiry, which has consisted of the Phase I report previously delivered to Beneficiary, has any current or former tenant, occupant or owner of the Property, or any portion thereof, engaged in or permitted any generation, storage, handling, dumping, discharge, disposal, spillage or leakage of any hazardous or toxic substances, at, on, or about the Property, or any portion thereof, except as disclosed on the Phase I report previously delivered to Beneficiary.

Notwithstanding the foregoing, Grantor shall be permitted to have such chemicals, materials and supplies on the Property which are normally used in connection with the prudent operation, use, maintenance and ownership of a multi-family unit apartment complex and which are used in compliance with environmental laws.

B. Indemnification. **THE GRANTOR HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND (WITH COUNSEL REASONABLY APPROVED BY BENEFICIARY) AND TO HOLD BENEFICIARY, ITS AGENTS, MEMBERS, OFFICERS, REPRESENTATIVES AND ITS EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, ADMINISTRATIVE PROCEEDINGS, JUDGMENTS, DAMAGES, PUNITIVE DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES (INCLUDING SUMS PAID IN SETTLEMENT OF CLAIMS), INTEREST OR LOSSES, INCLUDING REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND EXPENSES, OF ANY KIND OR NATURE (COLLECTIVELY, THE "COSTS") THAT ARISE DIRECTLY OR INDIRECTLY, FROM OR IN CONNECTION WITH THE PRESENCE, SUSPECTED PRESENCE, RELEASE OR SUSPECTED RELEASE (A "RELEASE") OF ANY HAZARDOUS OR TOXIC SUBSTANCE, FROM, ON, ABOUT, UNDER OR WITHIN THE PROPERTY, OR ANY PORTION THEREOF WHICH OCCURS DURING OR PRIOR TO SUCH TIME AS THE GRANTOR OWNS THE PROPERTY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, THE GRANTOR'S LIABILITY HEREUNDER, SUBJECT TO THE DE MINIMIS PROVISIONS OF ARTICLE XIII(A)(ii) ABOVE, SHALL NOT INCLUDE ANY LOSS ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF BENEFICIARY OR RELEASE OF HAZARDOUS OR TOXIC SUBSTANCES BY BENEFICIARY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF BENEFICIARY AFTER BENEFICIARY HAS TAKEN POSSESSION OF THE PROPERTY.**

C. Remediation. If any investigation or monitoring of site conditions, or any cleanup, containment, restoration, removal or other remedial work (collectively, the "**remedial work**") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreements affecting the Property because of, or in connection with any release of hazardous or toxic substances, Grantor shall perform, or cause to be performed, the remedial work in compliance with such law, regulation, order or agreement. All remedial work shall be performed by one or more contractors selected by Grantor and approved in advance, in writing, by Beneficiary and under the supervision of a consulting engineer selected by Grantor and approved in advance, in writing, by Beneficiary. All costs of any remedial work shall be paid by Grantor, including, without limitation, the reasonable charges of contractor(s) and/or the consulting engineer and Beneficiary's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of any remedial work. If Grantor shall fail to timely commence or cause to be timely commenced, or fail to diligently prosecute to completion, any remedial work, then Beneficiary may, but shall not be required to, cause such remedial work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be "**Costs**" within the meaning of Subparagraph B above. All costs shall be due and payable upon demand therefor by Beneficiary, together with interest thereon at the Default Rate provided in the Note from the date such costs are paid by

Beneficiary, until the same are refunded to Beneficiary and all such costs and the interest thereon shall be secured hereby.

D. Survival. Notwithstanding anything to the contrary contained herein, or in the Note or Loan Agreement, the obligations of Grantor under this Paragraph XIII shall survive any assumption of the Indebtedness by a successor to Grantor (whether or not the assumption has been approved or disapproved, or whether or not Grantor was released from liability on the Indebtedness), foreclosure of this Deed of Trust (or transfer of the Property in lieu of foreclosure) and release or termination of this Deed of Trust.

XIV.

MISCELLANEOUS

A. No Waiver. No delay by Beneficiary in exercising any right, option or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Default.

B. Cumulative Remedy. All rights and remedies of Beneficiary under this Deed of Trust and any and all other instruments evidencing or securing the Indebtedness, are cumulative and concurrent and may be exercised singularly, successively, or concurrently.

C. No Release. The granting to Grantor or to any other person or party of any extension(s) of time for payment of all or any part of the Indebtedness or the performance of any covenant or agreement contained herein, or the taking of other or additional security for the payment of the whole or any part of the Indebtedness, or the releasing of any part of the security at any time held in connection with the Indebtedness, shall not in any way release Grantor or any other person or party obligated for the payment of the Indebtedness, or release or impair this Deed of Trust or any other security held in connection with the Indebtedness, except to the extent of the person, party or property expressly released in writing by Beneficiary.

D. Severability. If any provision in this Deed of Trust is invalid or unenforceable in whole or in part, this instrument shall in all other respects remain in full force and effect.

E. Successors and Assigns. All of the provisions hereof shall apply to, inure to the benefit of, and be binding upon Grantor and the successors and assigns (provided the foregoing shall not be construed as consent to any transfer by Grantor of the Property.

F. Further Assurances and Corrections. From time to time, at the request of Beneficiary, Grantor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's reasonable opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Beneficiary to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all reasonable costs connected with any of the foregoing.

G. Choice of Law. This Deed of Trust shall be performable and enforced in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas from time to time in effect

except to the extent preempted by the United States federal law. Venue shall be appropriate in Harris County, as applicable.

H. Usury. In no event shall any provision of this Deed of Trust, the Note, the Loan Agreement or any other instrument evidencing or securing the Indebtedness ever obligate Grantor to pay interest on the Note secured hereby at a rate greater than that permitted by law, or obligate Grantor to pay any taxes, assessments, charges, insurance premiums, or other amounts to the extent that the payments constitute interest under applicable law and when added to the interest payable on the Note secured hereby, would be held to constitute the payment by Grantor of interest at a rate greater than that permitted by law; and this provision shall control over any provision to the contrary.

It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Note or the Indebtedness or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law ("Highest Lawful Rate"). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or the Indebtedness, or (iii) if any sum has been paid or Beneficiary will have received by reason of any voluntary prepayment of the Note and/or the Indebtedness, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Highest Lawful Rate shall be automatically cancelled, ab initio, and all amounts in excess of the Highest Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Note and/or the Indebtedness (or, if the Note and all Indebtedness have been or would thereby be paid in full, refunded to Grantor, and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to the Grantor, or crediting such excess interest against the Note and/or the Indebtedness then owing by the Grantor to Beneficiary. All sums contracted for, charged or received by Beneficiary for the use, forbearance or detention of any debt evidenced by the Note and/or the Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Indebtedness does not exceed the Highest Lawful Rate from time to time in effect and applicable to the Note and/or the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

I. Covenants Run with the Land. All obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Property until the lien of this Deed of Trust has been fully released by Beneficiary.

J. **JURY WAIVER. GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE**

OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE, THE INDEBTEDNESS OR THIS DEED OF TRUST.

K. Entire Agreement. **THIS DEED OF TRUST, TOGETHER WITH THE NOTE AND LOAN AGREEMENT, THE OTHER LOAN DOCUMENTS, AND THE RESTRICTIVE COVENANTS CONSTITUTE A WRITTEN LOAN AGREEMENT AS DEFINED IN SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE. THIS WRITTEN LOAN AGREEMENT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

L. Reserved.

M. Extended Low Income Housing Commitment. Pursuant to the terms of that Collateral Assignment of Note and Liens dated of even date herewith executed by Beneficiary for the benefit of the City (the "**Collateral Assignment**"), the City agreed that the liens securing the City Loan and evidence by this Deed of Trust and collaterally assigned to the City pursuant to the Collateral Assignment shall be subordinate to any extended low income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code)(the "Extended Use Agreement") recorded against the Land; provided that such Extended Use Agreement, by terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Land by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The City's Restrictive Covenants shall not be subordinate to any extended low income housing commitment as such term is defined in the Extended Use Agreement.

N. Reserved.

O. Non-Merger. It is the express intention of the parties hereto that in the event of foreclosure of this Deed of Trust, the leasehold estate so foreclosed shall not effect a merger with any liens (other than this Deed of Trust) in the Property held by the purchaser or any other estate in land in the Property held by the purchaser at foreclosure with the leasehold estate so acquired.

[Signatures on following page]

Signature Page
Leasehold Deed of Trust, Security Agreement and Financing Statement

IN WITNESS WHEREOF, Grantor has executed this Leasehold Deed of Trust, Security Agreement and Financing Statement on the date set forth in the acknowledgments below but to be effective as of _____, 2021.

GRANTOR:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation and sole member of 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company and sole general partner of **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership, on behalf of such corporation, limited liability company and limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____, 2021.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My Commission Expires:____

EXHIBIT A
PROPERTY DESCRIPTION

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

[TO BE ADJUSTED BASED ON FINAL SURVEY]

EXHIBIT B
PERMITTED ENCUMBRANCES
[TO BE ATTACHED BASED ON EXCEPTIONS IN TITLE COMMITMENT]

ATTACHMENT D
TO LOAN AGREEMENT

FINANCING STATEMENTS
UCC-1 and UCC-3

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Nancy F. Martin
Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.
1001 McKinney, Suite 1100
Houston, TX 77002

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME: **2100 Memorial Redevelopment, LP, a Texas limited partnership**

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2640 Fountainview Drive	**Houston**	**TX**	**77057**	**USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME: **APV Redevelopment Corporation, a Texas non-profit corporation**

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2640 Fountainview Drive	**Houston**	**TX**	**77057**	**USA**

4. COLLATERAL: This financing statement covers the following collateral:

(i) All of Debtor's right, title and interest, whether now or hereafter arising, in and to any and all plumbing, electrical, heating, cooling and other equipment and all building materials and other goods of every type, kind and character that are now or hereafter situated upon the Land (as herein after defined) and which (a) are intended to be Incorporated Into any Improvements on the Land ("Improvements") or (b) are now, or hereafter become, fixtures related to the Land or the Improvements; any and all other goods of every type, kind and character, Including without limitation, all appliances, furniture, fixtures, inventory and equipment now owned or hereafter acquired by Debtor that are now or hereafter situated upon the Land (whether or not situated within or attached to the Improvements) and that facilitate the use and occupancy of the Improvements for the purpose for which they were or are to be constructed; all plans and specifications for the Improvements, all rights of Debtor under all existing and future leases, construction, maintenance and other contracts covering or relating to the Land or the Improvements, all tenants' deposits made pursuant to or In connection with such leases, all rights of ingress and egress, easements, water and wastewater rights, and to the extent assignable, all licenses, permits, franchises, certificates, accounts, instruments, chattel paper, documents, agreements, contracts,

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, Item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
1671.0040 - 2100 Memorial Drive

ATTACHMENT D

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9 NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here [ ]

9a. ORGANIZATION'S NAME
2100 Memorial Redevelopment, LP

OR 9b INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10 DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a ORGANIZATION'S NAME

OR 10b INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11 [ ] ADDITIONAL SECURED PARTY'S NAME or [ ] ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a ORGANIZATION'S NAME

OR 11b INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

& general intangibles & all rights of Debtor in and to any development rights relating to the Land or the Improvements (including, without limitation, trade name & symbols used in connection therewith & any deposits with utility companies) and all other rights and privileges obtained in connection with, relating to or associated with the Land or the Improvements (collectively, the "Personalty") & all proceeds of the Personalty. (ii) All tax refunds, including interest thereon, tax rebates & tax abatements, & the right to receive the same, which may be payable or available with respect to the Land, Improvements and Personalty (collectively, "Property"), but excluding any Housing Tax Credits

13. [ ] This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT: [ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

Being a tract or parcel containing 1.561 acres (68,009 sq. ft.) of land situated in the John Austin Survey, Abstract #1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File # V449978 and as being more particularly described by metes and bounds.

17. MISCELLANEOUS:
1671.0040 2100 Memorial Drive

ATTACHMENT D

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME
2100 Memorial Redevelopment, LP

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11 ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

available pursuant to Sec. 42 of the Internal Revenue Code of 1986, as amended. (iii)All of Debtor's right, title & interest in the proceeds (including conversion to cash or liquidation claims) of(A) insurance relating to the Property & (B) all awards made for the taking by eminent domain(or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access or otherwise) & for severance damages. (iv)All of Debtor's right, title and interest in & to all substances in, on or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, & which now or may be in

13. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (If applicable)

14. This FINANCING STATEMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (If Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:
1671.0040 - 2100 Memorial Drive

ATTACHMENT D

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME
2100 Memorial Redevelopment, LP

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

the future enjoyed through extraction or removal from the property, including without limitation, oil, gas & all other hydrocarbons, coal, lignite carbon dioxide & all other nonhydrocarbon gases, uranium & all other radioactive substances & gold, silver, copper, iron & all other metallic substances or ores(collectively, "Minerals"). (v)All funds of Debtor that may be deposited with Secured Party at any time & from time to time for any purpose, which funds shall be deemed to be part of the Personalty for purposes hereof. (vi)All proceeds of any of the foregoing. Terms not otherwise defined herein shall have the meaning specified in Art. 9 of the Texas Business & Commerce Code, if applicable.

13. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT: ☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:
1671.0030 - 2100 Memorial Drive

ATTACHMENT D

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO (Name and Address)

Nancy F. Martin
Shannon, Martin, Finkelstein, Alvarado & Dunne, P.C.
1001 McKinney, Suite 1100
Houston, Texas 77002

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☑ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 8 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:
Check one of these two boxes: This Change affects ☐ Debtor or ☐ Secured Party of record
AND Check one of these three boxes to: ☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c ☐ ADD name: Complete item 7a or 7b, and item 7c ☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME
City of Houston, Director of Housing and Community Development

OR 7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS: 2100 Travis Street, 9th Floor | CITY: Houston | STATE: TX | POSTAL CODE: 77002 | COUNTRY: USA

8. ☐ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral
Indicate collateral:

9. NAME OF SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME
APV Redevelopment Corporation

OR 9b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
1671.0040 - 2100 Memorial Drive

ATTACHMENT D

ATTACHMENT E
TO LOAN AGREEMENT

COLLATERAL NOTE

NOTE

$25,000,000.00 _____, 2021

I. PROMISE TO REPAY.

FOR VALUE RECEIVED, 2100 MEMORIAL REDEVELOPMENT, LP, a Texas limited partnership ("Maker"), hereby agrees and promises to pay to the order of **APV REDEVELOPMENT CORPORATION,** a Texas non-profit corporation ("Payee"), at 2640 Fountain View Drive, Houston, Texas 77057, or at any other place as the holder hereof may from time to time in writing designate, on the times hereinafter provided, in coin or currency, which at the time of payment shall constitute legal tender of the United States of America, the principal sum of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00) or so much thereof as may be advanced, together with interest on the principal balance from time to time remaining unpaid at the rates set forth below.

The loan ("Loan") evidenced by this Note is subject to the terms and conditions of that one certain Loan Agreement (Borrower/Owner) ("Owner Loan Agreement") between Maker and Payee of even date herewith which incorporates the terms and conditions of a Loan Agreement between the City of Houston ("City"), Maker and Payee dated _____, 2021 ("City Loan Agreement"). All capitalized terms used but not defined in this Note have the same meanings as assigned to such terms in the Owner Loan Agreement.

The Note will be advanced in two tranches. The first tranche ("Tranche 1") in the amount of EIGHT MILLION AND NO/100 DOLLARS ($8,000,000.00) will be advanced for acquisition and demolition costs for the Project and the second tranche ("Tranche 2") in the amount of SEVENTEEN MILLION AND NO/100 DOLLARS ($17,000,000.00) will be advanced for costs associated with the construction of the Project and both Tranche 1 and Tranche 2 shall be advanced in accordance with and subject to the requirements set forth in the Loan Agreement.

II. TERM.

The term of the Loan shall commence on the date of this Note ("Closing Date") and shall mature upon the date which is forty (40) years after Project Completion as defined in the City Loan Agreement (the "Maturity Date"). This Note is secured by and entitled to the benefits of a Deed of Trust, Security Agreement and Financing Statement of even date herewith ("Deed of Trust") executed by Maker to Tom McCasland, Trustee, covering a leasehold interest in the Property (as defined in the Deed of Trust).

III. PAYMENTS.

The unpaid principal balance of the Note together with accrued but unpaid interest thereon shall be due and payable on the Maturity Date. Upon the event of a Default that extends beyond any applicable cure period, the Payee may declare the outstanding deferred principal balance to be immediately due and payable, without further notice or opportunity to cure subject to the requirements stated in the Loan Documents or other legal requirements. Until Project Completion, no interest will accrue on the Loan. Following Project Completion, the outstanding principal balance of this note shall accrue interest at the rate of one percent (1%) per annum.

Following the expiration of the Approved Construction Period until the Maturity Date, Maker shall pay an annual installment equal to the lesser of (i) one percent (1%) simple interest annually on the outstanding balance of the loan, plus accrued unpaid interest, if any, or (ii) fifty percent (50%) of Net Cash Flow. The annual interest payment or non-payment of such interest shall be accompanied by evidence acceptable to the Director documenting Net Cash Flow or lack of Net Cash Flow. Any accrued interest not paid will be added to principal.

For purposes of this provision Net Cash Flow as defined as follows:

> Net Cash Flow shall mean all income and revenues actually received by Owner from the lease of the Project Units and other improvements, and all other income and revenues actually received by Owner in connection with the Project, excluding and deducting therefrom all (1) Operating Expenses including any debt service payments related to the Senior Loan (but not any subordinate loans); (2) security, pet or cleaning deposits, if any; (3) payments from the Replacement Reserve or from Operating Reserves; (4) payments or reimbursements from insurers or other third parties and used or to be used for restoration, repair or remodeling of any of the Project Units or other improvements; (5) capital contributions, grants, proceeds of any permitted sale, transfer, exchange, refinancing or other disposition or encumbrance of all or a portion of the Project; (6) condemnation proceeds and awards in place of them; (7) tax reduction or abatement proceeds; (8) loan proceeds; (9) deposits made to operating reserves and to the replacement operating reserves; (10) payments of the deferred developer fee; and (11) any tax credit adjustments, any asset management fees due to either the Tax Credit Investor of Maker to the extent allowed under the Approved Final Project Budget and loans from the limited partner of Maker (to the extent the repayment of an such loan (a) is not secured by the Project, and (b) is made for the purposes of covering assumed tax liability, tax credit shortfalls, and operating deficits under the Approved Final Operating Budget for the applicable year and not for the purposes of facilitating distributions to the partners of Maker).

IV. DEFAULT; ACCELERATION.

If a Default exists the entire debt represented by this Note, consisting of the outstanding principal balance and all accrued interest thereon, shall, at the option of the holder hereof, become immediately due and payable, and except as otherwise provided herein or in any of the other Loan Documents, without notice, presentment for payment, demand, notice of nonpayment, notice of intention to accelerate, acceleration, or other notices of any type which are specifically waived. Time being of the essence hereof. Payee's rights under this paragraph shall be in addition to any other rights or remedies it may have under the Owner Loan Agreement and any other loan documents executed in connection therewith ("Loan Documents"), at law or in equity, to enforce Maker's obligations under the Loan Documents. At Payee's option during the continuance of any Default, interest shall accrue on the outstanding balance of this Note at a rate equal to the lower of ten percent (10%) per annum or the highest annual rate permitted by applicable law ("Default Rate"). For purposes of this Note, the term "Default" shall mean a default in payment of the Note or under the terms of this Note, the Deed of Trust, the Owner Loan Agreement, the City Loan Agreement or any other Loan Document securing or executed in connection with the Note that continues past the expiration of all applicable notice and cure periods. Should the terms of this paragraph IV conflict with the Intercreditor Agreement, the Intercreditor Agreement shall control in all respects.

V. PREPAYMENT/MODIFICATION.

THIS NOTE MAY NOT BE PREPAID OR MODIFIED WITHOUT THE PRIOR WRITTEN CONSENT OF THE PAYEE, WHICH CONSENT MAY BE WITHHELD OR GRANTED IN THE SOLE DISCRETION OF THE PAYEE.

VI. APPLICATION OF PAYMENTS.

Each payment made on this Note shall be credited first to accrued, unpaid interest and the remainder to principal.

VII. WAIVER.

Maker hereby waives presentment for payment, protest and demand, notice of protest, demand and dishonor, and non-payment of this Note, and except as otherwise specified in the Loan Agreement between the parties, waives notice of default, notice of acceleration, and notice of intent to accelerate, and hereby consents that the holder hereof may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the debt evidenced by this Note, at the request of any other person liable hereon, and such consent shall not alter nor diminish the liability of any person. The failure to exercise any remedy available to Payee shall not be deemed to be a waiver of any rights or remedies of Payee under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part, unless Payee specifically, unequivocally and expressly agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change or modification is sought.

VIII. COSTS OF COLLECTION; ATTORNEYS' FEES.

Maker agrees to pay all costs of collection, including reasonable attorneys' fees, if the principal of this Note or any payment on the principal or interest hereon is not paid at the respective maturity and to pay all reasonable costs including, attorneys' fees and court costs, if it becomes necessary to protect the security hereof, whether suit be brought or not, after default hereunder by Maker.

IX. USURY LIMITATIONS.

No provision of the Owner Loan Agreement, this Note, or any instrument securing payment of or relating to the indebtedness, shall require the payment or permit the collection of interest in excess of the Default Rate. If any excess of interest in such respect is herein or in any other instrument provided for, or shall be adjudicated to be so provided for herein or in any other instrument, the provisions of this paragraph shall govern and neither Maker nor any guarantor or endorser of this Note nor their respective heirs, personal representatives, successors, or assigns shall be obligated to pay such interest to the extent it is in excess of the Default Rate. Any fees or other sums that under applicable law are deemed to constitute interest shall be or other sums so deemed interest shall be amortized, prorated, allocated and spread in equal parts over the full stated term of the loan evidenced hereby.

If the maturity of this Note is accelerated for any reason before the due date stated, or in the event of any prepayment by Maker, or in any other event, earned interest may never exceed the Default Rate, computed from the date of disbursement of the loan evidenced hereby until payment, and any unearned interest otherwise payable hereunder that is in excess of the Default Rate shall be cancelled automatically as of the date of the acceleration, prepayment, or other event, and if previously paid, shall at the option of the holder of this Note be either refunded to Maker or credited on the principal of this Note, provided that, if the holder elects to credit the unearned interest on the principal of this Note, and such unearned interest exceeds the principal balance, the excess shall be refunded to Maker. Any interest computation under this Note and the Owner Loan Agreement shall be at not more than the Default Rate upon the portion of the face amount hereof representing principal that remains unpaid from time to time, it being the intention of the parties hereto to conform strictly to the laws applicable to the loan evidenced by this Note and the Owner Loan Agreement, and should it be held that interest payable under this Note and the Owner Loan Agreement is in excess of the Default Rate, the interest chargeable hereunder shall be reduced to the maximum amount permitted by law.

X. RESERVED

XI. GOVERNING LAW

This Note is made in the State of Texas and shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to conflicts of laws principles.

XII. SUCCESSORS

This Note shall be binding upon the parties hereto and their respective successors and assigns.

XIII. JURY WAIVER

MAKER AND PAYEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

XIV. ENTIRE AGREEMENT

THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

XV. BANKRUPTCY PREFERENCES

If at any time any payment received by Payee hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law (as defined below), then the obligation to make such payment shall survive any cancellation or satisfaction of this Note or return thereof to Payee and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand. For purposes of this Note, **"Debtor Relief Law"** shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts or similar laws affecting the rights of creditors.

XVI. RECOURSE

(a) Notwithstanding anything to the contrary set forth herein, or in the City Loan Agreement, or in any other documents executed in connection with the City Loan, upon the commencement of the Affordability Period, Maker and its Partners, except Guarantor during the effective period of the Guaranty Agreement (if Guarantor is a partner), shall have no personal liability under this Note, the Deed of Trust or the Loan Agreement for the repayment of the indebtedness or for the performance of any other obligations of Maker under the Loan Documents except as set forth below, and Payee's only recourse for the satisfaction of the indebtedness payable under the Loan Documents and the performance of such obligations shall be Payee's exercise of its rights and remedies with respect to the Project, Property and any other collateral held by Payee as security for the indebtedness except as set forth below. This limitation on Maker's liability shall not limit or impair Payee's enforcement of its rights against the Maker for any indebtedness or obligations of Maker under Section 16(b) of below.

(b) Maker shall be personally liable to Payee for the repayment of a portion of the indebtedness payable under the Loan Documents equal to any loss or damage suffered by Payee as a result of:

(i) failure of Maker to pay to Payee upon demand after a Default, all rents, revenues and profits from the operation of the Project to which Payee is entitled under the Deed of Trust and the amount of all security deposits collected by Maker from tenants then in residence, subject to the rights of any senior lender with a first lien deed of trust on the Project;

(ii) failure of Maker to apply all insurance proceeds and condemnation proceeds as required by the Loan Documents, subject to the rights of any senior lender with a first lien deed of trust on the Project;

(iii) failure of Maker, to comply with the requirements in the Deed of Trust or the Loan Agreement relating to the delivery of books and records, statements, schedules and reports;

(iv) fraud or any written material misrepresentation by Maker or any officer, agent, director, partner, member or employee of Maker in connection with the application for the Loan, the Loan Documents, or any request by Payee;

(v) failure to apply rents, revenues and profits, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable) and then to debt service amounts due, except that Maker will not be personally liable (i) to the extent that Maker lacks the legal right to direct the disbursement of such sums because of a senior loan deed of trust encumbering the Project, or bankruptcy, receivership or similar judicial proceedings, or (ii) with respect to surplus cash distributed in any calendar year if Maker has paid all operating expenses and debt service amounts due for that calendar year, provided that such distribution does not violate the terms of the City Loan Agreement;

(vi) failure of Maker to pay all deductibles required under any of the insurance policies required to be maintained under the Loan Agreement ;

(vii) the failure of the Maker to complete the construction of the Project by the date required under the Loan Agreement;

(viii) the failure of the Maker to qualify the Project as a "qualified low-income housing project" under Section 42(g) of the Code;

(ix) Failure of Maker to comply with the Restrictive Covenants executed in connection with the City Loan Agreement.

(x) Waste or damage to the Project as a result of the intentional misconduct or gross negligence of Maker; or

(xi) Failure of Maker to comply with the provisions of the Deed of Trust prohibiting hazardous or toxic substances or regarding compliance with environmental laws.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note the approximate principal amount of $32,000,000 (the "Construction Loan Note") issued by Maker and payable to Wells Fargo Bank, National Association (the "Senior Lender"), or order, to the extent and in the manner provided in that certain Intercreditor, Subordination and Funding Agreement of even date herewith between the Payee of this Note, the Senior Lender the Maker, City, Victory Street Public Facility Corporation and the fiscal agent (the "Subordination Agreement"). The Mortgage

securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Mortgage securing the Construction Loan Note 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 Mortgage securing this Note 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 this 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. Notwithstanding the foregoing, in the event that Tranche 2 does not close, and Construction Loan Note is not executed and delivered, or Wells Fargo Bank, National Association is no longer the Senior Lender, then this subordination will not apply.

EXECUTED to be effective as of the date first stated above.

MAKER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

FOR VALUE RECEIVED, PAY TO THE ORDER OF THE CITY OF HOUSTON, as collateral in accordance with the Collateral Assignment of Notes and Liens dated _____, 2021 between Payee and the City of Houston.

APV REDEVELOPMENT CORPORATION

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

ATTACHMENT F
TO LOAN AGREEMENT

COLLATERAL ASSIGNMENT OF NOTE AND LIENS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PROPERTY RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

COLLATERAL ASSIGNMENT OF NOTE AND LIENS

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

THAT **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation ("**Assignor**"), has collaterally TRANSFERRED AND ASSIGNED and by these presents does hereby collaterally TRANSFER AND ASSIGN unto CITY OF HOUSTON ("**Assignee**") a security interest (the "**Security Interest**") in all right, title and interest of Assignor in and to (a) the Promissory Note listed on Exhibit A attached hereto (the "**Collateral Note**"), (b) that Leasehold Deed of Trust, Security Agreement and Financing Statement dated of even date herewith executed by **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership ("**Owner**"), for the benefit of Assignor (the "**Deed of Trust**", and all documents and instruments securing, governing or evidencing the loan evidenced by the Collateral Note (collectively, the "**Collateral Loan Documents**"), and (c) all of the liens and security interests granted to Assignor in the Collateral Loan Documents or otherwise securing the Collateral Note (collectively, the "**Collateral Liens**"); and, further, Assignor hereby collaterally TRANSFERS AND ASSIGNS unto Assignee a security interest in all of the rights, privileges, securities, equities, powers, benefits, claims, priorities, demands, titles, or interests now owned or held by Assignor in and to the Collateral Note, the Collateral Loan Documents, and the Collateral Liens.

This Collateral Assignment is made to secure performance of Assignor's obligations under and pursuant to that certain Loan Agreement (the "**Loan Agreement**") dated _____, 2021 between Assignor, Assignee and Owner, including, without limitation, all renewals, replacements, rearrangements, substitutions, restatements, and extensions now or hereafter executed in connection therewith.

Assignor represents and warrants to Assignee that (A) Assignor is the sole legal and equitable owner and holder of the Collateral Note and the indebtedness evidenced thereby, (B) Assignor has not assigned, mortgaged, pledged, hypothecated or otherwise transferred its right, title or interest in and to the Collateral Note, any indebtedness evidenced thereby, the Collateral Loan Documents or any of the Collateral Liens to any party other than Assignee, (C) the Collateral Note is in all respects current and in good standing and is not overdue or subject to any credits or offsets, (D) neither the maker of the Collateral Note, nor any surety or guarantor of the Collateral Note, has raised any counterclaim, defense, allowance, adjustments, dispute, objection, or complaint regarding their respective liability on any of the Collateral Note or under any Collateral Loan Document, (E) the Collateral Note and the Collateral Loan Documents have not been amended, altered, or modified since the date of the execution thereof, (F) no default, or event which with notice, lapse of time, or both would constitute a default, under the Collateral Note or the Collateral Loan Documents has occurred, and (G) Assignor has the full right and authority to sell, assign, pledge, mortgage, hypothecate, transfer and grant a security interest in the Collateral Note, the Collateral Loan Documents, and the Collateral Liens.

When a Default exists under and as defined in the Loan Agreement, Assignee shall, in addition to the rights and remedies provided for (i) in the Loan Agreement, (ii) in the Loan Documents (as defined in the Loan Agreement), (iii) in the Collateral Note, (iv) any of the Collateral Loan Documents, and (v) at law or in equity, have the right to sell the Collateral Note in any manner afforded to Assignee under the laws of

the State of Texas including the exercise of all rights of a secured creditor under the UCC as defined below. The proceeds of the sale shall be applied toward the payment of all sums due and unpaid pursuant to the Loan Agreement.

The requirement of notice to Assignor of the time and place of any public sale of the Collateral Note, or of the time after which any private sale or any other intended disposition thereof is to be made, shall be met if such notice is mailed, postage prepaid, to Assignor at the following address:

If mailed/delivered:

APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057

or such other address provided to Assignee by Assignor in writing, at least thirty (30) days before the date of any public sale or at least thirty (30) days before the time after which any private sale or disposition is to be made, unless a longer period of time is required pursuant to the Uniform Commercial Code as adopted in the State of Texas (the "**UCC**"), in which case, applicable provisions of the UCC shall control.

Assignor authorizes Assignee to give notice to the maker of the Collateral Note of the existence of this Collateral Assignment and to instruct such maker, when a Default exists under the Loan Agreement, or under this Collateral Assignment, to direct all payments due and payable under the Collateral Note to Assignee.

Assignor retains the right to collect and receive any and all sums becoming due upon the Collateral Note, unless and until a Default exists under the Loan Agreement. Assignor shall not agree to amend, alter, or modify the Collateral Note or the Collateral Loan Documents or accept prepayment of the Collateral Note without the prior written consent of the Assignee, which may be granted or denied in Assignee's sole discretion.

This Collateral Assignment shall in no manner impair or affect any of the other liens granted by Assignor to Assignee, and no security hereafter taken therefor shall in any manner impair or affect the security hereby given, it being agreed that all such present and future security shall be cumulative security and that Assignee may foreclose under any of such security, as Assignee may elect, without waiving the other.

This Collateral Assignment shall expire and be of no further effect once the Affordability Period (as defined in the Loan Agreement) requirements of the Loan Agreement have expired in the event Assignee has not previously executed a written release of this Collateral Assignment.

THIS COLLATERAL ASSIGNMENT CONSTITUTES THE ENTIRE AGREEMENT WITH RESPECT TO THE SUBJECT HEREOF AND SHALL SUPERSEDE ANY PRIOR AGREEMENT BETWEEN THE PARTIES, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT HEREOF. FURTHERMORE, IN THIS REGARD, THIS AGREEMENT AND THE OTHER WRITTEN LOAN DOCUMENTS REPRESENT, COLLECTIVELY, THE FINAL AGREEMENT AMONG THE PARTIES THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED to be effective as of the __ day of _____, 2021.

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of **APV REDEVELOPMENT CORPORATION**, a Texas nonprofit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My commission expires:____.

EXHIBIT A

Promissory Note dated as of _____, 2021, executed by 2100 MEMORIAL REDEVELOPMENT, LP ("Borrower"), a Texas limited partnership, payable to the order of APV REDEVELOPMENT CORPORATION ("Lender"), a Texas non-profit corporation, in the original principal amount of $25,000,000.00 which is secured by, among other things, a Leasehold Deed of Trust, Security Agreement and Financing Statement, executed by Borrower to Tom McCasland, Trustee, for the benefit of Lender covering a leasehold interest in the real property more particularly described in the following legal description.

Being a tract or parcel containing 1.561 acres (68.009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE REVISED IF SURVEY UPDATED)

ATTACHMENT G
TO LOAN AGREEMENT

CONSTRUCTION COMPLETION GUARANTY

CONSTRUCTION COMPLETION GUARANTY

This Construction Completion Guaranty ("**Guaranty**") is made by the undersigned, **NEW AFFORDABLE HOUSING PARTNERS, LLC**, a Georgia limited liability company, and **SDK INTERESTS II, LLC**, a Delaware limited liability company (whether one or more, collectively, jointly and severally, hereinafter referred to as "**Guarantor**"), in favor of **THE CITY OF HOUSTON, TEXAS**, a home-rule city organized under the laws of the State of Texas ("**City**"), and is a guarantee of certain obligations of **APV REDEVELOPMENT CORPORATION** , a Texas nonprofit corporation **("Borrower"),** and **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership **("Owner")** (Borrower and Owner sometimes herein collectively referred to as "**Third Parties**").

RECITALS:

WHEREAS, Third Parties have requested that the City enter into a certain Loan Agreement ("**Agreement**") of substantially even date herewith, by and between Borrower, Owner and the City, pursuant to which the City is being requested to lend to Borrower an amount not to exceed TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00) ("**Loan**") to pay for eligible costs in connection with the new construction of a 197 unit apartment complex (collectively, the "**Improvements**") upon certain real property owned by Owner and located in Harris County, Texas ("**Premises**") (the Premises and the Improvements are hereinafter referred collectively to from time to time as, the "**Project**");

WHEREAS, Borrower's obligations to the City are evidenced by a certain Note executed by Borrower ("**Note**") of even date herewith and are secured, in part, by a Deed of Trust, Security Agreement and Financing Statement from Borrower to the City covering the Project ("**Fee Deed of Trust**") and a certain Collateral Assignment of Note and Liens executed by Borrower assigning Borrower's right, title and interest in and to a loan made by Borrower to Owner in the maximum principal amount of the Loan, together with a Leasehold Deed of Trust, Security Agreement and Financing Statement (collectively with the Fee Deed of Trust, the "**Deed of Trust**") covering a ground lease of the Project, certain other security documents, and all of the documents evidencing, securing, guaranteeing or governing the Loan, are sometimes referred to collectively as the "**Loan Documents**"); and

WHEREAS, the City is unwilling to enter into the Agreement and to make the Loan unless Guarantor delivers this Guaranty to the City.

NOW, THEREFORE, in consideration of the foregoing and in order to induce the City to enter into the Agreement and to make the Loan to Borrower subject to the terms and conditions of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and further acknowledging that the City intends to rely on the guaranty of Guarantor hereunder, Guarantor hereby agrees as follows:

1. **DEFINITIONS AND INTERPRETATIONS**. As used herein, the following capitalized terms shall have the following meanings:

"**Borrower**" shall mean Borrower and its successors and assigns.

"**Completion Date**" shall mean the date on which the Director sends written notice to Borrower that the Project Completion (as defined in the Agreement) has occurred in accordance with the Loan Documents and to the satisfaction of the Director and that the Guaranteed Obligations have been satisfied in full.

"**Guarantor**" shall mean and refer to each and all of the undersigned parties signing this Guaranty as Guarantor; and the liability of said parties for the performance of the covenants, duties and obligations of Guarantor hereunder shall be joint and several.

"**Owner**" shall mean Owner and its successors and assigns.

"**Third Parties**" shall mean Third Parties and their respective successors and assigns.

Capitalized words and phrases that are used herein and not defined herein shall have the meaning ascribed to them in the Loan Documents. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any of the members of the relevant class. Any defined term used herein that is a document, instrument, drawing, survey, map, plan, technical description or other writing, and any other reference herein to a writing, shall include the original of such writing and any and all amendments, supplements, modifications, renewals, extensions, restatements, reinstatements, rearrangements, enlargements, or replacements of or to the same from time to time.

2. **OBLIGATIONS GUARANTEED**. In consideration of the City entering into the Agreement and agreeing to make the Loan, and upon the terms and provisions hereof, Guarantor hereby irrevocably, jointly and severally, absolutely and unconditionally warrants and guarantees to the City the payment and performance of the following (the "**Guaranteed Obligations**"), when due, whether by their terms, by acceleration, or otherwise: (a) that Third Parties shall cause construction of the Project to be completed on or before the Completion Date, which shall be twenty-six (26) months after the Closing of the Loan (as defined in the Agreement) or (ii) the expiration date of the GLO Contract (as defined in the Agreement and construction shall be commenced within thirty (30) days after Closing, with time being of the essence for both deadlines; (b) that Third Parties shall cause the Project to be constructed and completed in accordance with the Loan Documents and all requirements of any governmental authority without deviation unless approved by the City, in writing, or specifically permitted by applicable provisions of the Agreement; (c) that Third Parties shall cause the Project to be constructed and completed free and clear of all liens other than those in favor of the Borrower (as collaterally assigned to City), Senior Lender, or as otherwise specifically permitted under the terms of the Deed of Trust; (d) that Owner shall strictly comply with the environmental covenants, representations and warranties contained in the Deed of Trust and (e) that Third Parties shall cause all costs of constructing the Project, including, but not limited to, all debt service and all operating deficits, to be paid when due, including without limitation, all costs in excess of those set forth in the Preliminary Project Budget (as defined in the Agreement) whether resulting from: (i) change orders; (ii) delays in obtaining any approvals from any governmental authority that are required for the construction, use, or occupancy of the Project (collectively, the "**Approvals**"); or (iii) otherwise. Guarantor further guarantees the payment and performance of the Guaranteed Obligations whether or not the same arise during or after the time that Owner is the owner of the Premises, whether subsequent owners of the Premises acquire the Premises by voluntary or involuntary means, by foreclosure or deed in lieu of foreclosure, or otherwise and notwithstanding that other persons or entities may be the subsequent owners of the Premises.

3. **CONSIDERATION**. Guarantor acknowledges that Guarantor has made this Guaranty to induce the City to make advances to Borrower of the Loan and that the City is making such advances to Borrower in reliance upon this Guaranty and would not make such advances without the appropriate execution and delivery of this Guaranty.

Guarantor represents and warrants to the City that Guarantor has a financial interest in Third Parties and will receive substantial economic benefit by reason of the City extending the Loan to Borrower, provided, however, that Guarantor's liability hereunder shall not be affected or impaired by such Guarantor's disposition or loss of its financial interest in Third Parties or by reason of the City's refusal in accordance with the terms of the Loan Documents to make Loan advances to Borrower.

4. **OBLIGATIONS OF GUARANTOR UPON DEFAULT**. If a Default exists that is a failure by any party to pay or to perform any part of the Guaranteed Obligations when due, Guarantor shall, within ten (10) business days after written demand of the City to Guarantor (a) cure such failure to pay and/or commence to perform diligently, continuously and in good faith the applicable part of the Guaranteed Obligations and complete same in the time frames required under the Loan Documents; (b) diligently procure completion of the Project at Guarantor's sole cost and expense and in the time frames required under the Loan Documents; (c) fully pay and discharge all claims, including for labor performed and material and services furnished in

connection with the construction of the Project, subject to the provisions of the Loan Documents, including the right thereunder to contest such claims; and (d) pay the City (x) all reasonable attorneys' fees and other costs the City incurs in enforcing the performance or the payment of the Guaranteed Obligations, with interest at the Default Rate (as defined in the Note), and/or (y) any and all sums the City has advanced to satisfy portions of the Guaranteed Obligations pursuant to the Agreement. The City agrees that: (i) in the event that and so long as Guarantor is not in default of the terms, conditions, provisions, and obligations hereunder beyond applicable grace periods; (ii) in the event that and so long as Guarantor is timely paying or performing the Guaranteed Obligations as required herein based on the written request of the City and without the requirement of any legal proceeding to enforce the same; and (iii) after Guarantor commences and diligently and continuously continues, in good faith, to pay or perform a portion of the Guaranteed Obligations after written request of the City and Guarantor has provided the City with evidence satisfactory to the City that such Guaranteed Obligations are being timely performed, lien-free (or bonded around) and in strict accordance with the Loan Documents, there is no further Default by Third Parties under the Agreement or the other Loan Documents or failure by Guarantor in payment or performance of the Guaranteed Obligations hereunder, the City shall continue to advance any Loan funds then available pursuant to the provisions of the Agreement as if no Default had occurred and shall not institute foreclosure proceedings under the Deed of Trust or charge interest at the rate under the Note during the period after which Guarantor first pays or performs a portion of the Guaranteed Obligations (which portion is sufficient to the City to evidence that the Guaranteed Obligations will be timely completed in strict accordance with the Loan Documents) after written request of the City and prior to the date that one of the conditions described in items (i), (ii), and (iii) is no longer met. It is expressly understood and agreed that the City may institute such foreclosure proceedings and/or charge interest at the Default Rate under the Note, notwithstanding Guarantor's compliance and timely performance hereunder, should any Default exist that is not cured promptly after: (a) receipt by Guarantor of notice thereof, or (b) a demand by the City to Guarantor pursuant to this Section 4. **ANYTHING IN THIS GUARANTY TO THE CONTRARY NOTWITHSTANDING, GUARANTOR FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) THAT THE CITY MAY SUFFER OR INCUR BY REASON OF THE BREACH OR FAILURE OF GUARANTOR'S UNDERTAKINGS AND AGREEMENTS PURSUANT TO THIS GUARANTY.**

5. **TERMINATION**. The obligations of Guarantor hereunder shall terminate on the Completion Date as defined herein.

6. **CONTINUING GUARANTY**. This is a continuing Guaranty, and shall apply to and cover all of the Guaranteed Obligations and all renewals and extensions thereof until the termination date of Guarantor's obligations hereunder as established pursuant to Section 5 hereof

7. **INDEPENDENT OBLIGATION; BANKRUPTCY OF BORROWER OR OWNER**. The obligations of Guarantor hereunder are independent of the obligations of Third Parties, or any other person; and the City may enforce any of the City's rights hereunder independently of any other right or remedy that the City may at any time hold with respect to the Guaranteed Obligations or any security or other guaranty therefor. Without limiting the generality of the foregoing, the City may bring a separate action against Guarantor without first proceeding against Third Parties, any other guarantor or any other person, or any security held by the City, and regardless of whether Third Parties or any other guarantor or any other Person is joined in any such action. The City's rights hereunder shall not be exhausted by any action taken by the City until all Guaranteed Obligations have been fully paid and performed or until the obligations of Guarantor hereunder terminate pursuant to Section 5 hereof.

The liability of Guarantor hereunder shall be reinstated and revived, and the rights of the City shall continue, with respect to any amount at any time paid on account of the Guaranteed Obligations that shall thereafter be required to be restored or returned by the City upon the bankruptcy, insolvency, or reorganization of Third Parties, any other guarantor or any other person liable for the Guaranteed Obligations, or otherwise, all as though such amount had not been paid. In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower and/or Owner relating to any indebtedness of Borrower and/or Owner to Guarantor and shall assign to the City all rights of Guarantor thereunder. If Guarantor does not file any such claim, the City, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in the City's sole discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of the City's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. The City or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the City the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to the City all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that the City receives cash by reason of any such payment or distribution. If the City receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Loan Documents.

8. **WAIVER**. Guarantor hereby waives: (a) any defense based upon any legal disability or other defense of Borrower, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Borrower or Owner from any cause other than full payment and performance of those obligations of Borrower or Owner which are guaranteed hereunder; (b) any defense based upon any lack of authority of the officers, directors, partners, managers, members or agents acting or purporting to act on behalf of Borrower, Owner or any principal of Borrower or Owner or any defect in the formation of Borrower or Owner or any principal of Borrower or Owner; (c) any defense based upon the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to the City or intended or understood by the City or Guarantor; (d) any and all rights and defenses arising out of an election of remedies by the City, even though that election of remedies has destroyed Guarantor's rights of subrogation or reimbursement against the principal; (e) any defense based upon the City's failure to disclose to Guarantor any information concerning Borrower's financial condition or any other circumstances bearing on Borrower's ability to pay and perform its obligations under the Note or any of the other Loan Documents or upon the failure of any other principals of Borrower to guaranty the Loan; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (g) any defense based upon the City's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (h) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (i) any right of subrogation, any right to enforce any remedy which the City may have against

Borrower or Owner and any right to participate in, or benefit from, any security for the Note or the other Loan Documents now or hereafter held by the City; (j) presentment, demand, protest and notice of any kind including notice of acceptance of this Guaranty; (k) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof; (l) any right to require the City to institute suit or exhaust remedies against Borrower or others liable for any of such indebtedness, to enforce the City's rights against any collateral which shall have been given to secure the Loan, to enforce the City's rights against any other guarantors of such indebtedness, to join Borrower or any others liable on such indebtedness in any action seeking to enforce this Guaranty, to resort to any other means of obtaining payment of such indebtedness; (m) notices of disbursement of Loan proceeds, acceptance hereof, proof of non-payment, default under any Loan Document, notices and demands of any kind (it being Guarantor's and the City's intent that Guarantor shall not be considered a "debtor" in accordance with Section 9.102 of the Texas Business and Commerce Code, as now existing or hereafter amended); (n) the invalidity, illegality or unenforceability of all or any portion of the indebtedness guaranteed hereby or any of the Loan Documents for any reason whatsoever, including that interest on such indebtedness violates applicable usury laws, that Borrower or others liable for all or a portion thereof have valid defenses, claims or offsets to all or a portion of such indebtedness, or that the Note or other Loan Documents have been forged or otherwise are irregular or not genuine or authentic (it being agreed that Guarantor shall remain liable under this Guaranty regardless of whether Borrower or any other person shall be found not liable for repayment of all or a portion of such indebtedness); (o) notice of any advances made or credit extended to Borrower on the faith of this Guaranty and of the execution and delivery by Third Parties of any documents evidencing, securing, or pertaining to the Guaranteed Obligations; (p) notice of, and the right to consent to, the City's assignment of the benefits of this Guaranty; and (q) any and all benefits that might otherwise be available to Guarantor under applicable law. Guarantor further waives any and all rights and defenses that Guarantor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) the City may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower or Owner; (2) if the City forecloses on any real property collateral pledged by Borrower or Owner, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the City may collect from Guarantor even if the City, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower or Owner. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's debt is secured by real property. These rights and defenses being waived by Guarantor include, but are not limited to, any rights or defenses based upon deficiency limitation, anti-deficiency, redemption or other similar rights. Without limiting the generality of the foregoing or any other provision hereof, Guarantor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation, any rights of subrogation, reimbursement, indemnification and contribution, and which might otherwise be available to Guarantor under Texas Property Code §§ 51.003, 51.004 and 51.005 or otherwise.

In addition, Guarantor agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder. Finally, Guarantor waives any rights and defenses it may have under Section 17.001 of the Texas Civil Practice & Remedies Code, Rule 31 of the Texas Rules of Civil Procedure, and Chapter 34 of the Texas Business & Commerce Code.

9. **GUARANTY UNIMPAIRED BY SUBSEQUENT EVENTS**. Except as otherwise provided herein, Guarantor hereby expressly waives the right to receive notice of, to consent to, or receive any additional consideration on account of any of the following, and Guarantor hereby

agrees that its obligations under this Guaranty shall not be released, diminished, impaired, reduced, or otherwise affected by the occurrence of any of the following events (or the fact that any of such events have occurred):

(a) The amendment, renewal, extension, restatement, or assignment of any part or all of the Guaranteed Obligations or any of the plans and specifications, the Loan Documents, or other documents evidencing, securing, or pertaining thereto, or any other forbearance or agreement by the City to accept a deferred payment or performance of any Guaranteed Obligations; and

(b) The cancellation of any part of the Guaranteed Obligations or the release of Borrower, Guarantor, or any other Person from liability for all or any part of the Guaranteed Obligations; it being acknowledged and agreed by Guarantor that Guarantor may be required to pay or perform the Guaranteed Obligations in full without the assistance or support of any other party, and no Guarantor has been induced to enter into this Guaranty on the basis of any contemplation, belief, understanding, or agreement that any other party shall at all times be liable to pay or perform the Guaranteed Obligations or that the City shall look to other parties to pay or perform the Guaranteed Obligations.

10. **AUTHORITY TO MODIFY GUARANTEED OBLIGATIONS**. Guarantor authorizes the City at any time and from time to time without notice and without affecting the liability of Guarantor hereunder, to: (a) alter the terms of all or any part of the Guaranteed Obligations and any security and guaranties therefor, including without limitation modification of times for payment and rates of interest; (b) accept new or additional instruments, documents, agreements, security, or guaranties in connection with all or any part of the Guaranteed Obligations; (c) accept partial payments on the Guaranteed Obligations; (d) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate, and enforce all or any part of the Guaranteed Obligations and any security or guaranties therefor, and apply any such security and direct the order or manner of sale thereof (and bid and purchase at any such sale), as the City, in the City's sole discretion, may determine; (e) release Borrower or Owner, any Guarantor, and/or any other Person from any personal liability with respect to all or any part of the Guaranteed Obligations; and (f) assign this Guaranty in whole or in part to a person or entity that becomes the holder or owner of the Note.

11. **SUBORDINATION**. Guarantor subordinates all present and future indebtedness owing by Borrower and Owner or, during the existence of a Default, by any other guarantor of the Loan, to Guarantor to the obligations at any time owing by Borrower and Owner to the City under the Note and the other Loan Documents. Guarantor assigns all such indebtedness to the City as security for this Guaranty, the Note and the other Loan Documents. Guarantor agrees to make no claim for such indebtedness until all obligations of Borrower or Owner under the Note and the other Loan Documents have been fully discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless the City is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If the City so requests, (a) all instruments evidencing such indebtedness shall be duly endorsed and delivered to the City, (b) all security for such indebtedness shall be duly assigned and delivered to the City, (c) such indebtedness shall be enforced, collected and held by Guarantor as trustee for the City and shall be paid over to the City on account of the Loan but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (d) Guarantor shall execute, file and record such documents and instruments and take such other action as the City deems necessary or appropriate to perfect, preserve and enforce the City's rights in and to such indebtedness and any security therefor. If Guarantor fails to take such action, the City, as attorney-in-fact for

Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

12. **MISCELLANEOUS PROVISIONS**.

(a) Costs of Enforcement. If the City incurs any reasonable attorney's fees or costs in enforcing or defending any provisions of this Guaranty and is the prevailing party with respect to the same or incurs any costs in collecting any amounts due hereunder, with or without the hiring of an attorney or the filing of any legal action or proceeding, Guarantor shall pay to the City, promptly upon demand, all such costs and the amount of all reasonable attorneys' fees incurred. Guarantor also agrees to pay interest at the Default Rate on the amount of any other payment it is required to make hereunder that it fails to make when due.

(b) Binding Effect. This Guaranty and all the terms, provisions, and conditions hereof shall be binding upon Guarantor and Guarantor's heirs, legal representatives, successors, and assigns, and this Guaranty shall inure to the benefit of the City and its successors and assigns and all subsequent holders of the Guaranteed Obligations.

(c) Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Texas.

(d) No Waiver. Any failure by the City to insist, or any election by the City not to insist, upon strict performance by Guarantor of any of the terms, provisions, or conditions of this Guaranty shall not be deemed to be a waiver of the same or of any other terms, provisions, or conditions thereof; and the City shall have the right at any time or times thereafter to insist upon strict performance by Guarantor of any and all of such terms, provisions, and conditions.

(e) Counterparts. This Guaranty may be executed by the parties hereto separately in any number of counterparts, each of which shall be an original and all of which collectively shall constitute one and the same agreement.

(f) Nature of Guaranty. The obligations, covenants, agreements and duties of each Guarantor under this Guaranty Agreement shall be joint and several with Third Parties and each other Guarantor, shall be irrevocable, absolute and unconditional, shall remain in full force and effect until the Completion Date or full satisfaction of Guarantor's obligations under this Guaranty Agreement, and shall in no way be affected or impaired by reason of the happening from time to time of any other event.

(g) No Remedy Exclusive. No remedy conferred upon or reserved to the City herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or any instrument executed by any Guarantor to secure this Guaranty or in connection herewith, or now or hereafter existing at law or in equity.

(h) Jury Waiver. **GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED, GUARANTOR, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY**

TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR ITS BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY OR THE GUARANTEED OBLIGATIONS.

(j) Notice. All Notices sent under this Guaranty shall be delivered in the manner set forth in the Agreement for delivery of notice.

This Guaranty shall be binding upon the successors and assigns of the undersigned. Executed to be effective as of the _____ day of _____, 2021.

GUARANTOR:

NEW AFFORDABLE HOUSING PARTNERS, LLC

By: _____
Name: _____
Title: _____

SDK INTERESTS II, LLC

By: _____
Name: _____
Title: _____

ATTACHMENTS H AND I

INTERCREDITOR, SUBORDINATION, AND FUNDING AGREEMENT

E. It is anticipated that following the completion of the Project, upon and as a condition to the conversion of the Borrower Loan to its permanent phase, Citibank, N.A. will succeed to the interests of Wells Fargo Bank, N.A., as Senior Funding Lender, and thereupon the Senior Deed of Trust will be amended and restated pursuant to a certain Amended and Restated Multifamily Leasehold Deed of Trust, Assignments of Leases and Rents, Security Agreement and Fixture Filing (Texas), together with Fee Subordination and Joinder, by and among Borrower, Owner and Fiscal Agent. The amount of the permanent loan will not exceed $11,700,000.00 without the consent of the City.

F. Subject to satisfaction of certain requirements of the City, the City has agreed to lend to Subordinate Lender the sum of $25,000,000.00 (the "**City Loan**") which shall be secured by a Deed of Trust, Security Agreement and Financing Statement ("**City Deed of Trust**") against the Fee Simple Real Estate. The City Loan will be loaned to Subordinate Lender which will lend the proceeds of the City Loan to the Borrower ("**City Subloan**", and together with the City Loan, collectively, the "**Second Lien Loans**") for the acquisition and construction costs of the Project, as provided in the City Loan Documents (as hereinafter defined). The City Subloan shall be secured by a Leasehold Deed of Trust, Security Agreement and Financing Statement against the Ground Lease ("**City Subloan Deed of Trust**" and collectively with the City Deed of Trust, the "**Second Lien Deed of Trust**") which City Subloan, the City Subloan Deed of Trust and related loan documents shall be collateral assigned to the City as additional collateral for the City Loan. The documents and agreements evidencing, securing or relating to the City Loan and the City Subloan are listed in Part 2 of **Exhibit B** attached hereto (collectively, "**City Loan Documents**"). By virtue of this Agreement, the Second Lien Loans and the City Loan Documents, are specifically made subordinate to the Senior Funding Loan and Senior Funding Loan Documents.

G. Subject to satisfaction of certain requirements of the Subordinate Lender, the Subordinate Lender has agreed to lend to the Borrower the sum of $4,800,000.00 (the "**Third Lien Loan**" and together with the Second Lien Loans, the "**Junior Loans** for the construction costs of the Project. The Third Lien Loan shall be secured by a Subordinate Leasehold Deed of Trust, Security Agreement - Financing Statement against the Ground Lease ("**Third Lien Deed of Trust**" and together with the Second Lien Deed of Trust, the "**Junior Deeds of Trust**"). The documents and agreements evidencing, securing or relating to the Third Lien Loan are listed in Part 3 of **Exhibit B** attached hereto (collectively, "**Third Lien Loan Documents**" and collectively with the Senior Funding Loan Documents and the City Loan Documents, the **Funding Documents**".) City and Subordinate Lender are collectively referred to as the "**Junior Lenders**". By virtue of this Agreement, the Third Lien Loan and the Third Lien Loan Documents, are specifically made subordinate to (i) the Senior Funding Loan and Senior Funding Loan Documents and (ii) the Second Lien Loans and the City Loan Documents.

H. The Subordinate Lender, City, and Senior Funding Lender, are collectively referred to as the "**Funders**" and individually referred to as a "**Funder**" and the Senior Funding Loan and the Junior Loans are collectively referred to as the "**Sources**".

I. The purpose of this Agreement, among other things, is: (i) to set forth the relative priorities of funding the Borrower's equity and each Funder's component of the total Project costs;

and (ii) to set forth procedures to be followed in the event of the occurrence of an event of default under the various agreements of the Borrower with the Funders.

AGREEMENT:

NOW, THEREFORE, for a good and valuable consideration, including the mutual promises of the Parties contained herein, the Parties agree as follows:

SECTION 1. LOAN AND GRANT

1.0 Notice of Assignment. Each Funder shall give the other Parties written notice of any assignment of any of their rights in connection with their Funding Documents within ten (10) days following the effective date of any such assignment. The Funders each consent to the collateral assignment of the City Subloan, City Subloan Deed of Trust and related loan documents by Subordinate Lender to City.

1.1 Consent. Senior Funding Lender hereby consents to the execution, delivery and performance of the City Loan Documents, the Third Lien Loan Documents and the recording of the Junior Deeds of Trust, and other liens securing same in the Official Records of Harris County, Texas.

SECTION 2. AFFORDABILITY RESTRICTIONS

2.0 Priority of Restrictions. As required by the terms of the City Loan, the Borrower and the Subordinate Lender have also executed the Restrictive Covenants dated as of the Effective Date, which imposes certain land use restrictions on the Ground Lease and the Fee Simple Real Estate (the "**City Restrictions**"). The Borrower, the Government Lender and Fiscal Agent have entered into a Land Use Restriction Agreement dated as of the Effective Date, which imposes certain restrictions on the Ground Lease ("**Bond Restrictions**"). The City Restrictions and the Bond Restrictions are collectively referred to as the "**Affordability Restrictions**". The Parties expressly consent to the Affordability Restrictions, the recording of the Affordability Restrictions prior to any deeds of trust and stipulate, acknowledge, and agree that the Affordability Restrictions shall at all times have the priority relative to each other as stipulated in this section. The City Restrictions and the Bond Restrictions shall have equal priority to one another.

SECTION 3. SECURITY DOCUMENTS.

3.0 Subordination to Affordability Restrictions. The Affordability Restrictions, in the order of priority set forth in Section 2.1 above, shall at all times be superior to all of the deeds of trust on the Project (including, without limitation, all deeds of trust described herein) and all other liens, security interests, assignments, and pledges (collectively, "**Security Documents**") now or hereafter given to secure the Sources, as applicable. The Affordability Restrictions shall also have priority over the Ground Lease and shall encumber and bind the Fee Simple Real Estate. The Junior Deeds of Trust securing the Junior Loans and the Senior Funding Deed of Trust are expressly subordinate to the Affordability Restrictions which Affordability Restrictions have the order of priority among themselves set forth in Section 2.1 above. Notwithstanding anything herein to the contrary, in the event of the foreclosure of any of the Security Documents or the

termination of the Ground Lease, the Affordability Restrictions shall remain in full force and effect with respect to the Project of the Fee Simple Real Estate.

3.1 Priority of Security Documents. Notwithstanding the dates of execution, order of recording or other apparent priority of the Security Documents securing the Junior Loans, the City and Subordinate Lender expressly stipulate, acknowledge and agree that (i) the Security Documents securing the City Loan and City Subloan shall at all times be subordinate to the Security Documents securing the Senior Funding Loan; and (ii) the Security Documents securing the Third Lien Loan shall at all times be subordinate to the Security Documents securing the Senior Funding Loan, the City Loan and the City Subloan. The Security Documents shall have the following priority relative to each other, regardless of the frequency or manner of renewal, extension, change or alteration thereof:

(1) First Priority: Senior Deed of Trust that encumber the Borrower's leasehold estate under the Ground Lease as to the Ground Lease and the Fee Simple Real Estate;

(2) Second Priority: City Deed of Trust which encumbers the Fee Simple Real Estate and the City Subloan Deed of Trust which encumber Borrower's leasehold interest under the Ground Lease; and

(3) Third Priority: Third Lien Deed of Trust which encumbers the Borrower's leasehold interest under the Ground Lease.

3.2 No Modifications. The Junior Lenders may from time-to-time enter into modifications, renewals, extensions, and replacements of the loans evidencing the City Loan Documents and/or the Third Lien Loan Documents, as applicable, without the further consent of Government Lender or the Senior Funding Lender so long as such agreements recite that they are, and shall be at all times, subject to the terms of this Agreement and so long as those agreements do not increase the principal amount or the amount of the periodic installments due under the City Loan Documents or the Third Lien Loan Documents as applicable or increase the interest rate. Unless and until all of the Senior Funding Loan secured by the Project is fully paid and satisfied and the obligations of Senior Funding Lender to make any further loans or advances under the Senior Funding Loan has ceased and terminated, the Junior Lenders will not, without the consent of the Senior Funding Lender, take any additional collateral for the Junior Loans. Neither Senior Funding Lender nor Government Lender shall amend the Senior Funding Loan Documents without the prior written consent of the Director of the City's Housing and Community Development Department with any administrative consents (as opposed to consents required from the City Council) not to be unreasonably withheld, if such amendment will have the effect of (i) increasing the principal amount of the Senior Funding Loan or any amounts payable to the Senior Funding Lender, except that amounts advanced by Senior Funding Lender relating to the construction, development, operation and/or protection, preservation, and maintenance of the Project or protecting its lien, including repairs, taxes, insurance, and legal fees and other expenses of collection or defense of Senior Funding Lender's lien or the security therefor in accordance with the Senior Funding Loan Documents shall not require consent (however notice will be provided), (ii) increasing the rate of interest of the Senior Funding Loan, other than default interest and late charges, (iii) shortening the maturity of the Senior Funding Loan (except for such acceleration as may be permitted under the Senior Loan Documents), or (iv) increasing or decreasing the monthly

payments or escrows for taxes, insurance, and other reserves on the Senior Funding Loan except as may necessary to cover actual increases in the costs of taxes and insurance. Senior Funding Lender may otherwise amend the Senior Funding Loan Documents without the City's prior written consent. Notwithstanding the foregoing, however, in no event shall any such modification be made, and the City shall be obligated to consent to any modification, that amends or terminates the Affordability Restrictions, other than a modification that extends the period during which the Affordability Restrictions encumber the Fee Simple Real Estate and Ground Lease.

Any provision in the Senior Funding Loan Documents that purports to secure "other indebtedness" that is unrelated to the Senior Funding Loan and the Senior Funding Loan Documents, and the Fee Simple Real Estate or the Ground Lease shall be ineffective as against the City and the Subordinate Lender and their Security Documents, and the Security Documents of the City and the Subordinate Lender shall have priority over any such "other indebtedness."

3.3 Collateral. Each of the items referenced above constituting collateral (whether covering the Fee Simple Real Estate, and/or the Ground Lease) together with all equipment, accounts, general intangibles, fixtures and other personal property used or acquitted for use, on or in connection with the use or operation of the Project) being referred to collectively as the "Collateral."

3.4 Secured Parties. The Funders are sometimes called the "Secured Parties" in this Agreement.

3.5 Actions by Subordinate Lender under the City Subloan. Subordinate Lender shall have no authority to declare any defaults or exercise any remedies under the City Subloan without the express consent of the City to whom the applicable subloan has been collaterally assigned.

SECTION 4. PROCEDURES FOR DISBURSEMENT REQUESTS AND FUNDING.

4.0 Applications for Payments.

(a) Funding under the Funding Documents will be in accordance with the requirements of and for the items allowed under each Funder's Funding Documents. Unless otherwise agreed, the Borrower shall submit its applications for payment (each an "**Application for Payment**") no more frequently than once in any thirty (30) day period.

(b) The Borrower and Subordinate Lender, as applicable, represents and warrants to the Funders, as of the Effective Date and as of the date of each Application for Payment, that neither the Borrower, Subordinate Lender nor the Project is in breach of or in default under any of the Funding Documents.

(c) The Borrower and Subordinate Lender agree that the Funders may share information that each Funder may acquire with respect to the Borrower, the Subordinate Lender, the Fee Simple Real Estate and/or the Ground Lease and consent to the transfer of such information, whether financial or otherwise, between them, without having to obtain the Borrower's or Subordinate Lender's consent.

4.1 Inspections. As of the Effective Date, the Funders will engage an inspector, acceptable to all Funders (the "**Inspector**"), to inspect the progress of construction of the Project and verify the completion of the work covered by the Application for Payment in accordance with the final plans approved by all Parties (together with any change orders approved by the Funders in accordance with their respective Funding Documents). The Inspector shall furnish its report to all Funders at their addresses provided for notice below after receipt of an Application for Payment.

4.2 Objections. Upon receipt of the Inspector's report, if any Funder objects to an item or a portion thereof included in the Application for Payment or the Inspector's report, such Funder shall make reasonable efforts to notify the drawing party and all other Funders within **FIVE (5) BUSINESS DAYS** after receipt of the Inspector's report. Upon the giving of notice of such objection from any Funder, the Funders shall be relieved of any obligation (but shall have the right) to make a disbursement for the item or portion thereof contained in the Application for Payment until such time as the drawing party has cured the objection to the reasonable satisfaction of the Funders.

4.3 Funding Sequence. Funding under the Funding Documents shall occur in the following order, or in combination, subject to each Funder's Funding Documents and requirements: 1) City Loan (to the extent of eligible costs under the City Loan Documents), 2) Senior Funding Loan and 3) Third Lien Loan.

4.4 Approvals. Except as provided herein, none of the City or Subordinate Lender shall be required to obtain approval from any other Party prior to funding of any amounts under the City Loan Documents.

SECTION 5. DEFAULTS AND REMEDIES

5.0 Notice of Default. Upon the occurrence of a default by the Borrower or Subordinate Lender (as applicable) under any of the Funding Documents, which default remains uncured in excess of ten (10) days after the provision of notice thereof, each Funder agrees to give written notice thereof to the other Funders at the same time as the giving of any written notice of default to the Borrower or Subordinate Lender if the Funder elects to declare such default.

5.1 Funders' Opportunity to Cure. With respect to any monetary default under any Funding Documents, each Funder shall have the right (but not an obligation) to cure any such default during the period that is the longer of (i) thirty (30) days from the date such notice of default is given to the Funders; or (ii) five (5) days after the expiration of any cure period provided to the Borrower and/or Subordinate Lender under any applicable Funding Documents. With respect to any non-monetary default by the Borrower or Subordinate Lender under any Funding Documents, each Funder shall have the right (but not an obligation) to cure any such default during the period that is the longer of (i) sixty (60) days from the date such notice of default is given to such Funder; or (ii) five (5) days after the expiration of any cure period provided to the Borrower and/or Subordinate Lender under any applicable Funding Documents. Senior Funding Lender agrees that it will not accelerate the Senior Funding Loan, or exercise any remedies under the Senior Funding Loan Documents unless the other Funders fail to cure such defaults prior to the expiration of the cure periods stated herein, and if any portion of the Senior Funding Loan has previously been or is thereafter accelerated, Senior Funding Lender agrees to reinstate the Senior

Funding Loan in accordance with its original terms, upon the cure of the defaults under the Senior Funding Loan Documents within such cure period. The failure of any Funder to provide any notice to another Funder shall not affect the validity of such notice or any obligation of the Borrower and/or Subordinate Lender to any Funder and shall not affect the relative priorities between the Senior Funding Loan, and the Junior Loans as set forth herein. Borrower covenant and agree to forward to City and Subordinate Lender, within three (3) business days of their receipt thereof, a copy of any notice of a default under the Senior Funding Loan that Borrower receives from the Senior Funding Lender and/or a copy of any notice of a default under the Third Lien Loan that Borrower receives from Subordinate Lender.

5.2 Notice of Acceleration. Each Funder agrees that it will provide any notice of intention to accelerate obligations owed by the Borrower and/or Subordinate Lender to the other Funders at the same time that such notice is given to the Borrower.

5.3 Continuation of Project. In connection with any foreclosure of the Security Documents, the City stipulate and agree that they will cooperate diligently, in good faith and using reasonable efforts to identify and engage a qualified operator for the Project to replace the Borrower, for purposes of completing construction of the Project and operating the Project during the term of the Affordability Restrictions to provide housing for very-low and low-income families, provided, however, that any replacement operator shall be subject to the approval of the Senior Funding Lender, which shall not be unreasonably withheld, delayed or conditioned.

5.4 Right to Purchase. The City shall have the right, but not the obligation, in lieu of curing any default under the Senior Funding Loan Documents to purchase the Senior Funding Loan by paying the outstanding principal amount thereof, plus all accrued and unpaid interest thereon, together with reasonable unreimbursed expenses incurred by the Senior Funding Lender in connection therewith (including actual attorneys' fees) in exchange for an assignment of the Senior Funding Loan and the Senior Funding Loan Documents (including any title policies to the extent allowed by applicable law) and an endorsement of the note evidencing the Senior Funding Loan Loan on forms reasonably acceptable to the City, and the Senior Funding Lender. Such transfer shall be without recourse or warranty by the Senior Funding Lender, and the City shall release the Senior Funding Lender from all claims and other liabilities in connection with the Senior Funding Loan.

5.5 The occurrence of a default or event of default after applicable notice and cure periods under the Senior Funding Loan Documents shall cause a default or event of default under the City Loan Documents and the Third Lien Loan Documents, but the occurrence of a default or event of default under the City Loan Documents and Third Lien Loan Documents shall not in and of itself cause a default or an event of default under the Senior Funding Loan Documents.

5.6 The exercise by the City of any of its rights in and to the collateral for the City Loan including, without limitation, (i) a foreclosure sale of the Fee Simple Real Estate and/or the Ground Lease to the City, or any affiliate of the City, (ii) a conveyance to the City, or any affiliate of the City pursuant to a deed-in-lieu of foreclosure, or (iii) a sale of the Fee Simple Real Estate or Ground Lease by the City, or any affiliate of the City, following a conveyance of the Real Property or Ground Lease by foreclosure or deed-in-lieu of foreclosure, shall not constitute a default under the Senior Funding Loan Documents but any such conveyance shall be subject to the Senior

Funding Loan Documents. Conveyances to third parties (other than the City or its affiliates) shall require the prior written consent of the Senior Funding Lender which shall not be unreasonably withheld.

5.7 The exercise by the Subordinate Lender of any of its rights in and to the collateral for the Third Lien Loan including, without limitation, (i) a foreclosure sale of the Borrower's interest in the Ground Lease to Subordinate Lender , or any affiliate of Subordinate Lender, or (ii) a conveyance to the Subordinate Lender, or any affiliate of Subordinate Lender pursuant to a deed-in-lieu of foreclosure covering the Borrower's interest in the Ground Lease, following such a conveyance shall not constitute a default under the Senior Funding Loan Documents or the City Loan Documents but any such conveyance shall be subject to the Senior Funding Loan Documents and the City's Loan Documents. Conveyances to third parties (other than the Subordinate Lender or its affiliates) shall require the prior written consent of the Senior Funding Lender and the City which shall not be unreasonably withheld.

5.8 So long as the Senior Funding Loan and the City Loan are outstanding, the fee and leasehold estates to the Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates in one Party.

SECTION 6. MISCELLANEOUS

6.0 Invalid Provisions. In the event, any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not be affected in any way thereby.

6.1 Waivers and Amendments. No waiver, modification, addition, or amendment to any of the terms hereof shall be binding or effective unless and until made in writing and duly executed by all Parties.

6.2 Time. A "business day" means any day other than Saturday, Sunday, or a holiday during which any of the Funders is not open for business. Any time period expressed as a number of days without expressly specifying business days shall be calculated on the basis of calendar days. With respect to any time period referred to herein, the Parties stipulate, acknowledge, and agree that **TIME IS OF THE ESSENCE OF THIS AGREEMENT**.

6.3 Applicable Law. The interpretation, validity and enforceability of this Agreement shall be governed by and construed under the laws of the State of Texas, and the terms and conditions of this Agreement shall be performed within Harris County, Texas.

6.4 Notices. Except as otherwise provided herein, all notices, demands, requests, and other communications required or permitted hereunder shall be given in writing and sent by (i) personal delivery, or (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) facsimile (provided that such facsimile is confirmed by expedited delivery service or by United States mail in the manner previously described), addressed to the addressee at such party's address set forth by its signature below, or to such other address as such party may specify by written notice, sent in accordance with this paragraph at least thirty (30) days prior to the date of the giving of such

notice. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery, or in the case of mail, as of the date of deposit in an official depository of the United States mail, or in the case of either delivery service, or facsimile, upon receipt. To the extent actual receipt is required, rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was received shall be deemed to be receipt of the notice, demand, request, or other communication sent.

6.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which will constitute an original instrument, all of which will constitute one and the same documents.

6.6 Entirety. This Agreement, including the attached exhibits and documents listed thereon, which are incorporated herein by reference for all purposes, constitute the sole and only agreement of the parties hereto related to the subject matter hereof and correctly sets forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect. The signatures of the parties hereto reflect that each of the parties has fully read and realizes the effect of this Agreement, and the parties have executed this Agreement as their free and voluntary act with the full opportunity to be advised by each party's respective counsel.

6.7 No Third-Party Beneficiaries. All of the understandings, agreements, representations, and warranties contained herein are solely for the benefit of the Parties. The Parties do not intend the benefits of this Agreement to inure to any third party. Nothing contained in this Agreement is intended to affect or limit, in any way, the security interests that the Secured Parties may have at any time in the Collateral and so far as the rights of third parties are concerned. Subject to the express terms and provisions of this Agreement, the Secured Parties specifically reserve all of their respective rights and security interests in the Collateral.

6.8 Binding Effect. This Agreement shall be binding upon the Parties hereto and their respective successors and permitted assigns,and shall inure to the benefit of the Parties and their respective successors and assigns.

6.9 Termination. This Agreement shall terminate upon the later of (i) the expiration of the Affordability Restrictions; (ii) repayment or deemed satisfaction in full of all sums advanced under the City Documents, or (iii) the termination of all obligations of the Borrower or Subordinate Lender to the City.

6.10 Signature. This Agreement does not confer any rights on the Borrower in addition to those conferred under the Funding Documents.

6.11 No Joint Venture. The Parties state that it is not their intention to engage in a joint venture and that under no circumstances will either party be deemed to be the agent of the other.

6.12 Casualty and Condemnation. In the event of any casualty or condemnation resulting in insurance or condemnation proceeds being paid to Senior Funding Lender for application to the payment of obligations secured by the Senior Funding Loan Documents, unless the proceeds are used for repair or restoration in accordance with the Senior Funding Deed of Trust, then Senior

Funding Lender will remit all proceeds in excess of the portion thereof applied to the repayment of the Senior Funding Loan to the City, to be distributed in accordance with the provisions of the City Loan Documents and any residual funds in excess of the portion thereof applied to the repayment of the City Loan shall be paid to Subordinate Lender for application to the Third Lien Loan and any excess shall be applied as required by applicable law.

6.13 Escrow Accounts. Pursuant to the Funding Loan Documents, Senior Funding Lender, may require the Borrower to escrow amounts for the payment of taxes and insurance with respect to the Ground Lease ("Escrow Accounts"). If Senior Funding Lender requires such Escrow Accounts, then Senior Funding Lender agrees to use such amounts to pay such taxes and insurance as they become due and will not apply such amounts to the Senior Funding Loan. If Senior Funding Lender does not require the Borrower to maintain Escrow Accounts, the City may require (but shall not be obligated to do so) the Borrower to maintain Escrow Accounts and to pledge such Escrow Accounts to the City.

6.14 The Junior Lenders with respect to the Junior Loans hereby agree:

(a) In the event of any Bankruptcy Proceeding relating to the Borrower, the Subordinate Lender and/or the Project or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which the assets or interests of the Borrower and/or the Subordinate Lender are consolidated, then in either event, (i) the Senior Funding Loan shall first be paid in full before the Junior Lenders shall be entitled to receive and retain any payment or distribution in respect to the Junior Loans; and (ii) the Second Lien Loans shall be paid in full before the Third Lien Loan. The Junior Lenders agree that (i) during the pendency of the Bankruptcy Proceeding, any payment or distribution with respect to the Junior Loans which the Junior Lenders would be entitled to but for this Agreement (whether in cash, property, or other assets) will be made to the Senior Funding Lender until the Senior Funding Loan is paid in full and then to the City Loan and City Subloan until the City Loan and City Subloan are paid in full and then to the Third Lien Loan until the Third Lien Loan is paid in full and (ii) the subordination of the Junior Loans and any documents securing or executed in connection therewith shall not be affected in any way by Senior Funding Lender or the City electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, Junior Lenders hereby covenant and agree that, in connection with a Bankruptcy Proceeding involving the Borrower, neither the Junior Lenders nor any of their respective affiliates shall (i) make or participate in a loan facility to or for the benefit of the Borrower on a basis that is senior to or pari passu with the liens and interests held by Senior Funding Lender pursuant to the Funding Loan Documents, and (ii) not contest the continued accrual of interest on the Senior Funding Loan, in accordance with and at the rates specified in the Senior Funding Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings. Further, Subordinate Lender hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving the Borrower, neither Subordinate Lender nor any of its affiliates shall (i) make or participate in a loan facility to or for the benefit of the Borrower on a basis that is senior to or pari passu with the liens and interests held by the City or the Subordinate Lender pursuant to the City Loan Documents, and (ii) not contest the continued accrual of interest on the City Loan or

the City Subloan, in accordance with and at the rates specified in the City Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.

(b) The Parties hereto covenant and agree that the effectiveness of this Agreement and the rights of Senior Funding Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Funding Loan, by any delay, forbearance, failure, neglect or refusal of Senior Funding Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Funding Loan Documents or any other security which may have been given or may hereafter be given for the Senior Funding Loan, by any waiver or failure to exercise any right or remedy under the Senior Funding Loan Documents, or except as otherwise herein provided, by any other act or failure to act by Senior Funding Lender. The Parties hereto covenant and agree that the effectiveness of this Agreement and the rights of the City and Subordinate Lender hereunder with respect to the Second Lien Loans and Third Lien Loan shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the City Loan, City Subloan or Third Lien Loan, by any delay, forbearance, failure, neglect or refusal of City or the Subordinate Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the City Loan Documents or Third Lien Loan Documents or any other security which may have been given or may hereafter be given for the City Loan or City Subloan or the Third Lien Loan (as applicable), by any waiver or failure to exercise any right or remedy under the City Loan Documents or the Third Lien Loan Documents (as applicable), or except as otherwise herein provided, by any other act or failure to act by City or Subordinate Lender with respect to the Second Lien Loans or Third Lien Loan. The Parties agree that the Senior Funding Lender, the City and Subordinate Lender may each, at its sole option, release all or any portion of the Project from the lien of its deed of trust, and may release or waive any guaranty, surety or indemnity providing additional collateral to such Party. The Parties hereto hereby waive any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Project by Senior Funding Lender, to require the separate sales of any portion of the Project or to require Senior Funding Lender to exhaust its remedies against any portion of the Project or any other collateral before proceeding against any other portion of the Project or other collateral (including guarantees) for the Senior Funding Loan, and with respect to the Second Lien Loans and Third Lien Loan, the Parties hereto hereby waive any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Project by the City or Subordinate Lender, to require the separate sales of any portion of the Project or to require the City or Subordinate Lender to exhaust its remedies against any portion of the Project or any other collateral before proceeding against any other portion of the Project or other collateral (including guarantees) for the City Loan and City Subloan or the Third Lien Loan, as applicable. Senior Funding Lender may pursue all rights and remedies available to it under the Senior Funding Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action (as such terms are hereinafter defined) by a Junior Lender, except as otherwise provided by applicable law or this Agreement. At any time or from time to time and any number of times, without notice

to the other Parties, (a) the time for payment of the Senior Funding Loan, the City Loan, the City Subloan or the Third Lien Loan may be extended or renewed in whole or in part; (b) the time for the Borrower's or Subordinate Lender's (as applicable) performance of or compliance with any covenant or agreement contained in the Senior Funding Loan Documents, the City Loan Documents or the Third Lien Loan Documents as applicable, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Funding Loan may be accelerated as provided in the Senior Funding Loan Documents and the maturity of the City Loan or City Subloan may be accelerated as provided in the City Loan Documents subject to the requirements of this Agreement and Third Lien Loan may be accelerated as provided in the Third Lien Loan Documents subject to the requirements of this Agreement; (d) any Senior Funding Loan Document may be extended by Senior Funding Lender and the Borrower, any City Loan Documents may be extended by the City, Subordinate Lender, and the Borrower and any Third Lien Loan Documents may be extended by Subordinate Lender and Borrower; and (e) any security for the Senior Funding Loan, the City Loan, City Subloan and the Third Lien Loan may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Senior Funding Loan. If, after the occurrence of a default under the Senior Funding Loan, Senior Funding Lender acquires title to any of the Project pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior Deeds of Trust automatically shall terminate with respect to such Project upon Senior Funding Lender's acquisition of title, but the Affordability Restrictions shall remain in place for the term of the applicable Affordability Restrictions. As used in this section, "*Enforcement Action*" means any exercise of any of remedies under the Junior Deeds of Trust, or any of the other City Loan Documents or the Third Lien Loan Documents, including, without limitation, any of the following: (i) the acceleration of all or any part of the Junior Loans, (ii) the commencement of any judicial or non-judicial action of proceeding to enforce any obligation of the Borrower or Subordinate Lender (as applicable) under any of the City Loan Documents or Third Lien Loan Documents, collect any monies payable to the Borrower or Subordinate Lender or have a receiver appointed to collect any monies payable to the Borrower or Subordinate Lender, or foreclose the lien(s) created by the Junior Deeds of Trust, (iii) the filing or joining in the filing of any involuntary Bankruptcy Proceeding against the Borrower, Subordinate Lender or any person or entity which owns a direct or indirect interest in the Borrower or Subordinate Lender, (iv) the advertising of or commencement of any foreclosure or trustee's sale proceedings, (v) the exercise of any power of sale, (vi) the acceptance of a deed or assignment in lieu of foreclosure or sale, (vii) the collecting of rents, (viii) the obtaining of or seeking of the appointment of a receiver, (ix) the seeking of default interest, (x) the taking of possession or control of any of the Property, (xi) the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the notes evidencing the Junior Loans or any other of the City Loan Documents and/or Third Lien Loan Documents, (xii) the exercising of any banker's lien or rights of set-off or recoupment, or (xiii) the taking of any other enforcement action against the Borrower or any other party liable for any of the Junior Loans or obligated under any of the City Loan Documents or the Third Lien Loan Documents, or the Property, and (ii) "*Enforcement Action Notice*" means a written notice from the City, Subordinate Lender or to Senior Lender, given following a default under the Junior Loans, the City Loan

Documents or the Third Lien Loan Documents and the expiration of any notice or cure periods provided for such default in the City Loan Documents or the Third Lien Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken.

(c) Junior Lenders covenant and agree that they will not commence any Enforcement Action until 30 days have elapsed after an Enforcement Action Notice is provided to Senior Funding Lender.

6.15 **Insurance**. Junior Lenders agree that all original policies of insurance required pursuant to the Senior Deed of Trust shall be held by Senior Funding Lender. The preceding sentence shall not preclude Junior Lenders from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by the Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Deed of Trust, or that it be named as an additional insured under all policies of liability insurance maintained by the Borrower with respect to the Property. The City shall have priority over the Subordinate Lender to any such insurance proceeds.

6.16 **WAIVER OF TRIAL BY JURY**. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

6.17 **REFINANCING**. Subject to the terms of the City Loan Agreement dealing with refinancing, the Junior Lenders agree that their agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the then outstanding balance of the Borrower Loan (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Funding Loan Documents and Senior Funding Lender and Fiscal Agent, as the case may be, will mean, respectively, the refinance loan documents and the holder of such refinanced debt.\\\

6.18 **PERMANENT CONVERSION**. In connection with the conversion of the Borrower Loan to the permanent phase (as defined in the Senior Funding Loan Documents), the Subordinate Lender agrees that this Agreement shall continue govern the priority of the Borrower Loan to the Subordinate Loan. The Junior Lender hereby approves the partial repayment of the Senior Funding Loan and the amendment, restatement or replacement of the Senior Deed of Trust and other Senior Funding Loan Documents in connection with such conversion to the extent provided for in the Senior Funding Loan Documents subject to the terms of this Agreement provided that the balance of such permanent loan may not exceed $11,700,000.00 without the City's prior written consent.

[Remainder of this page intentionally left blank; signature page follows.]

[Signature page for Intercreditor, Subordination, and Funding Agreement.]

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation on behalf of such corporation.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

ADDRESS FOR NOTICE:

APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057
Attention: Mark Thiele

[Signature page for Intercreditor, Subordination and Funding Agreement.]

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company, the sole general partner

By: APV Redevelopment Corporation, a Texas non-profit corporation, its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation and sole member of 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company and sole general partner of **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership, on behalf of such corporation, company, and limited partnership.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

ADDRESS FOR NOTICE:

2100 Memorial Redevelopment, LP
2640 Fountain View Drive
Houston, Texas 77057
Attention: Mark Thiele

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of **APV REDEVELOPMENT CORPORATION**, a Texas nonprofit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My commission expires:____.

ADDRESS FOR NOTICE:

APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057
Attention: Mark Thiele

[Signature page for Intercreditor, Subordination and Funding Agreement.]

WELLS FARGO BANK, N.A.

By:_____
Name:_____
Title:_____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____ ___, 2021, by, _____, _____of Wells Fargo Bank, N.A., a national banking association, on behalf of said association.

_____
Notary Public in and for the State of Texas

(SEAL)

ADDRESS FOR NOTICES

_____
_____
_____

[Signature page for Intercreditor, Subordination and Funding Agreement.]

VICTORY STREET PUBLIC FACILITY CORPORATION,
a Texas public nonprofit corporation

By:_____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____ ___, 2021, by, _____, the _____ of Victory Street Public Facility Corporation, a Texas public nonprofit corporation, on behalf of said association.

_____
Notary Public in and for the State of Texas

(SEAL)

ADDRESS FOR NOTICE:

_____
_____
_____

[Signature page for Intercreditor, Subordination and Funding Agreement.]

_____(fiscal agent)

By:_____
Name:_____
Title:_____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____ ___, 2021, by, _____, _____of _____, a _____, on behalf of said _____.

_____
Notary Public in and for the State of Texas

(SEAL)

ADDRESS FOR NOTICES

_____
_____
_____

[Signature page for Intercreditor, Subordination and Funding Agreement.]

CITY OF HOUSTON, TEXAS

Pat Jefferson Daniel,
Interim City Secretary

Sylvester Turner, Mayor

APPROVED:

COUNTERSIGNED:

Tom McCasland, Director
Housing and Community Development
Department

Chris B. Brown, City Controller

APPROVED AS TO FORM:

COUNTERSIGNATURE DATE:

Senior Assistant City Attorney
LD#_____

ADDRESS FOR NOTICE:

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

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
Attention: Section Chief, Real Estate

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

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by _____ for Sylvester Turner, Mayor of the CITY OF HOUSTON, a municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE ADJUSTED ACCORDING TO FINAL SURVEY)

EXHIBIT B

FUNDING DOCUMENTS

Part 1: Wells Fargo Bank, N.A., Funding Loan Documents

1. Credit Agreement;
2. Promissory Note Secured by Deed of Trust;
3. Construction Leasehold and Fee Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing;
4. Repayment Guaranty (Secured Loan);
5. Completion Guaranty;
6. Disbursement Instruction Agreement;
7. Pledge and Security Agreement;
8. Hazardous Materials Indemnity Agreement (Unsecured);
9. Assignment of Management Agreement;
10. Assignment and Subordination of Development Fee Agreement;
11. Assignment of Construction Agreements;
12. Assignment of Architectural Agreements and Plans and Specifications;
13. Assignment of Mortgage and Loan Documents;
14. Subordination and Intercreditor Agreement;
15. UCC Financing Statement (Borrower)
16. UCC Financing Statement (Pledge)
17. UCC Financing Statement (Fixture Filing)

Part 2: City Loan Documents

1. Restrictive Covenants;
2. Borrower's Note;
3. Deed of Trust, Security Agreement and Financing Statement;
4. UCC-1 Financing Statement and UCC-3 Assignment of Financing Statement;
5. Collateral Note;
6. Collateral Assignment of Note and Liens;
7. Construction Completion Guaranty;
8. Intercreditor, Subordination, and Funding Agreement;
9. Assignment of Property Management Agreement;
10. Assignment of Architect's Contract, Plans and Specifications, and Consent;
11. Assignment of Construction Contract and Consent;

12. Assignment of Construction Contract and Consent (Subcontract);
13. Assignment of Demolition Contract;
14. Assignment of Engineer's Contract and Consent;
15. Environmental Indemnity Agreement;
16. Maintenance Bond, Payment Bond and Performance Bond
17. Borrower/Owner Loan Agreement;
18. Affidavit—No Commissions by Borrower;
19. Affidavit—No Commissions by Owner;
20. Affidavit—Use of City Funds;
21. Certification Regarding Lobbying; and
22. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

Part 3: Third Lien Loan Documents

Subordinate Promissory Note

Subordinate Leasehold Deed of Trust, Security Agreement - Financing Statement

ATTACHMENT J
TO LOAN AGREEMENT

ASSIGNMENT OF DEMOLITION CONTRACT
AND CONSENT

ASSIGNMENT OF DEMOLITION CONTRACT AND CONSENT

FOR VALUE RECEIVED, **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership (**"Owner"**), whose mailing address is: 2640 Fountain View Drive, Houston, Texas 77057, as additional security for the obligations incurred by **APV REDEVELOPMENT CORPORATION** a Texas non-profit corporation (**"Borrower"**), pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the **"City Loan Agreement"**), between the Borrower, Owner and **THE CITY OF HOUSTON** (**"City"**), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of $25,000,000.00 (**"City Loan"**), which is secured by among other collateral, a Fee Deed of Trust on the Project described below as well as the Collateral Assignment described below. The proceeds of the City Loan were utilized by Borrower to make a $25,000,000.00 (**"Owner Loan"**) to Owner for the construction of the project located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 (**"Project"**) and which Owner Loan and all documents executed in connection therewith including a Leasehold Deed of Trust on the Project were collaterally assigned to the City pursuant to a certain Collateral Assignment of Note and Liens (**"Collateral Assignment"**) executed by Borrower, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of Owner in and to that certain demolition contract (the **"Contract"**) by and between Borrower and _____(**"Contractor"**), a true and correct copy of the Contract having been deposited with and held by City. Upon the satisfaction in full of the obligations of Borrower to City evidenced by the City Loan Agreement and the Restrictive Covenants and other documents executed in connection therewith (**"City Loan Documents"**), this Assignment of Demolition Contract and Consent (**"Assignment"**) shall become null and void.

Owner and Contractor, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Owner's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract, and upon such exercise City shall become responsible for Owner's obligations thereunder.

Owner hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Owner's rights with respect to the Contract, to give appropriate receipts, releases and satisfactions for and on behalf of Owner and to do any and all acts in the name of Owner or in the name of City with the same force and effect as Owner could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred and is then occuring, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), Owner hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and Owner agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

Capitalized terms not otherwise defined herein shall have the meaning specified in the City Loan Agreement.

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Signature Page

Assignment of Demolition Contract and Consent

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

[CONTRACTOR'S CONSENT FOLLOWS]

CONSENT OF CONTRACTOR

The undersigned ("**Contractor**") represents to **THE CITY OF HOUSTON** ("**City**") that the Contract (as defined in that certain Assignment of Demolition Contract and Consent ("**Assignment**") which immediately precedes this Consent of Contractor ("**Consent**") is the contract to be used in the actual demolition of the existing improvements on the Project; and Contractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by Borrower or Owner under the City Loan Documents, City is authorized to use the Contract for the purpose of completing the demolition work on the Project contemplated by the City Loan Documents.

Contractor acknowledges that City is relying and is entitled to rely on Contractor's professional skill and competence in the provision of construction management services under the Contract.

To induce City to enter into the City Loan Documents with Borrower evidencing the City Loan, Contractor hereby agrees that all of the liens which Contractor may have or be entitled to either against such Contract or against the Project contemplated by the City Loan Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deeds of Trust and the liens and security interests securing the payment of the loan or loans to be made pursuant to the City Loan Documents.

DATED to be effective as of _____, 2021.

_____

By:_____
Name: _____
Title: _____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A
Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE UPDATED IF SURVEY CHANGES)

ATTACHMENT K
TO LOAN AGREEMENT

ASSIGNMENT OF PROPERTY MANAGEMENT AGREEMENT

ASSIGNMENT OF PROPERTY MANAGEMENT AGREEMENT

THIS ASSIGNMENT OF PROPERTY MANAGEMENT AGREEMENT (this **"Assignment"**) is made as of _____, 2021 by and among **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership ("**Owner**"), **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation ("**Borrower**"), and _____, a _____, having an address at _____ Houston, Texas ("**Manager**").

RECITALS

A. Owner is the owner of the real property located at 2100 Memorial Drive, Houston, Harris County, TX 77007 ("**Project**") and is making certain improvements to the Project.

B. Manager is the property manager of the Project pursuant to that certain Property Management Agreement dated as of _____ 2021, between Owner and Manager (as from time to time amended in accordance with the terms thereof and hereof, the "**Management Agreement**").

C. Owner has requested that the City of Houston, Texas ("**City**") make a $25,000,000.00 ("**Loan**") to Borrower to be used by Borrower to make a loan to Owner to provide funds for the construction of the Project.

D. The Loan will be (i) advanced pursuant to the terms of a certain Loan Agreement dated as of the date hereof between City, Borrower and Owner (as the same may be amended from time to time, the "**Loan Agreement**"); and (ii) secured by a Deed of Trust, Security Agreement and Financing Statement from Borrower to the City covering the Project ("**Fee Deed of Trust**") and a Collateral Assignment of Note and Liens ("**Collateral Assignment**") executed by Borrower assigning Borrower's right, title and interest in and to a loan made by Borrower to Owner, in the principal amount of the $25,000,000.00, together with a Leasehold Deed of Trust, Security Agreement and Financing Statement covering the Project (collectively with the Fee Deed of Trust, the "**Deed of Trust**").

E. City has required, as a condition to making the Loan and as additional security for the obligations of Borrower under the Loan, (i) that Owner assign to City all of Owner's right, title and interest in and to the Management Agreement; (ii) that Owner and Manager subordinate, to the extent herein provided, their respective right, title and interest in and to the Management Agreement to the liens and security interests securing performance of the Loan; and (iii) that Owner and Manager agree to the terms, covenants and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. ***Terms***. Terms defined in the Loan Agreement have the same meanings when used herein unless otherwise defined herein or the context hereof otherwise requires.

2. ***Assignment***. Subject to the terms and conditions hereof, to further secure the performance of the obligations under the Loan Agreement and documents executed in connection with or securing the Loan Agreement ("**Loan Documents**"), Owner hereby collaterally grants, transfers and assigns to City all of Owner's right, title and interest in, to and under the Management Agreement together with all right, power and authority of Owner to alter, modify or change the terms of the Management Agreement or to surrender, cancel or terminate the same, and Manager consents to such assignment pursuant to and in accordance with the agreements set forth herein. So long as no Default exists under the Loan Agreement or any of the Loan Documents, Owner shall have the license to perform under and receive performance under the Management Agreement. Neither this Assignment nor any action taken by City under or pursuant to this Assignment shall be deemed to impose any obligation or liability upon City to Manager under or with respect to the Management Agreement or any covenants of Owner

thereunder; except that from and after the date upon which City (a) agrees in writing to assume performance of Owner's obligations under the terms of the Management Agreement, or (b) acquires title to the Project by foreclosure or otherwise, Manager shall be entitled to the management fees and other sums provided in the Management Agreement which are due and payable after acquisition of the Project by City so long as Manager is performing its duties thereunder.

3. ***Representations and Warranties***. Owner and Manager hereby represent and warrant to City that as of the date hereof (a) the only agreement affecting the management of the Project (as more particularly set forth in the Management Agreement) is the Management Agreement, (b) the Management Agreement constitutes the full agreement between Owner and Manager, and there are no amendments thereto, (c) the Management Agreement is in full force and effect, and (d) neither Owner nor Manager is in default under the Management Agreement, and no event has occurred which, with the giving of notice and/or the passage of time would constitute a default thereunder. Owner represents and warrants that but for this Assignment and the other Loan Documents and pursuant to the Senior Loan Documents (as defined by the Loan Agreement) if any, Owner has not transferred, assigned or encumbered, in whole or in part, the Management Agreement or any of Owner's rights or interests thereunder. Owner further represents that, other than as provided in the preceding sentence, Owner has not performed any act or executed any instrument which might prevent or limit City from proceeding under any of the terms and conditions hereof.

4. ***Covenants***.

(a) Owner, at its sole cost and expense, shall fully perform every obligation under the Management Agreement by Owner to be performed, and shall enforce or secure the performance of every obligation of the Management Agreement by Manager to be performed for or on behalf of Owner (unless in Owner's good faith, prudent business judgment, it would not be in the best interest of the Project to do so and such obligation is not material). Owner shall not waive or release Manager from Manager's material obligations to be performed under the Management Agreement. Owner shall not enter into any agreement other than the Management Agreement for the management of the Project. Except pursuant to the Senior Loan Documents (if any), Owner will not transfer, assign or encumber, in whole or in part, the Management Agreement or any of Owner's rights or interests thereunder. Any violation of any of such covenants on the part of Owner without the prior written consent of City shall constitute a Default entitling City to exercise the remedies available to it hereunder and under the Loan Documents; *provided*, however that this Assignment is subject to the notice, grace, and cure periods described in the Loan Agreement that are to be provided to Owner, which are incorporated herein by reference.

(b) Owner and Manager shall not modify or amend, in any material respect, or terminate, the Management Agreement without City's prior written consent, such consent not to be unreasonably witheld, conditioned, or delayed; *provided*, however, that in the event City is given written notice of Owner's default and opportunity to cure in accordance with the first sentence of Section 5 below and such default is not cured by Owner or City within the applicable time period, Manager shall be permitted (subject to the third sentence of Section 7) to terminate the Management Agreement in accordance with the provisions thereof.

(c) Owner and Manager hereby agree that notwithstanding any provision to the contrary set forth herein or in the Management Agreement, Manager shall not receive any management fee in excess of five percent (5.0%) of gross annual income at any time, provided, however an additional one percent (1.0%) in the aggregate of the Project's gross annual income may be paid as an additional property management fee from any Net Cash Flow remaining after payment of interest owed on the Loan.

(d) At Owner's sole cost and expense, Owner shall appear in and defend any action or proceeding connected with the Management Agreement and shall pay all necessary costs and expenses of City, including reasonable attorneys' fees, in any such action or proceeding in which City may appear.

5. ***Default by Owner Under Management Agreement***. In the event of any material default by Owner under the Management Agreement, Manager shall give City written notice of such default, and City shall be permitted an opportunity (not less than forty-five (45) days from receipt of said notice) to cure such default by Owner, during which time Manager shall have no right to terminate the Management Agreement; *provided*, however, that City shall in no event be required to effect any such cure, and any cure by City shall not release Owner or Manager from any of its obligations under the Management Agreement. City shall have the right to appear in and defend any action or proceeding purporting to affect the Project or the rights and powers of City hereunder. Owner agrees to protect, defend, indemnify and hold City harmless from and against any and all losses, damages, claims, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees) incurred in connection with any such actions or measures taken by City or otherwise incurred in the exercise of any other rights or remedies of City under this Assignment. Owner agrees that all sums so expended by City in curing any default by Owner, or in appearing in or defending any action or proceeding, or in taking any other action permitted hereby, in each case together with interest thereon at the Default Rate (as defined in the Loan Agreement) shall be payable by Owner upon demand and shall be added to any obligations owing by Borrower under the Loan Agreement and shall be secured by the Deed of Trust, Collateral Assignment and any other security held for the Loan.

6. ***No Duty to Perform; Indemnity***. City shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Management Agreement, or under or by reason of this Assignment, and Owner shall and does hereby indemnify and hold City harmless against and from any and all liability, loss or damage arising or occuring prior to foreclosure which City may or might incur under the Management Agreement or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Management Agreement, except as a result of or in connection with the gross negligence or willful misconduct of City. Should City incur any such liability, loss or damage under the Management Agreement or under or by reason of this Assignment, or in the defense of any such claims or demands, except as a result of or in connection with the gross negligence or willful misconduct of City, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by the Loan Documents, and Owner shall reimburse City therefor immediately upon demand, and upon the failure of Owner to do so, same shall constitute a Default and City may, upon thirty (30) days notice to Owner, if the amounts properly due and owing to City have not been paid, exercise the remedies available to it under the Loan Documents.

7. ***Subordination***. Manager hereby subordinates any and all right, title and interest it may now or in the future have in the Management Agreement and/or to receive payment of any management or other fees set forth therein to the liens and security interests securing the obligations under the Loan Agreement; *provided*, however, that until the occurrence and continuance of a Default, Owner shall be entitled to pay, and Manager shall be entitled to receive, the management fee in accordance with the terms of the Management Agreement. Further, Manager agrees that any and all liens, rights, and interest owned, claimed, or held by it, in and to the Project, are and shall be in all respects subordinate to the lien and security interest created by the Deed of Trust and Collateral Assignment. In the event of any sale of the Project pursuant to foreclosure of the Deed of Trust, or a deed in lieu of foreclosure, Manager agrees that it will not exercise any rights it may have to terminate the Management Agreement by reason of such sale. Notwithstanding the foregoing, Manager agrees that such foreclosure or deed in lieu of foreclosure shall operate to cut off, extinguish, and otherwise terminate all liens that Manager, and those claiming by, through, or under Manager, may now or hereafter have in and to the Project, and Manager agrees that City or any purchaser at a foreclosure sale under Deed of Trust lien may terminate the Management Agreement upon foreclosure or at any time thereafter.

8. ***Default***. Upon (i) the occurrence and continuation of a Default under the Loan Agreement or other Loan Documents that extends beyond all applicable notice, grace and cure periods, or (ii) the occurrence of a default on the part of Owner hereunder or under the Management Agreement which extends beyond all applicable notice, grace and cure periods under the Loan Agreement, then, without regard for the adequacy of the security for the Loan, City shall have the right (but not the

obligation) to: (a) take possession of the Project and exercise and enjoy all right, title and interest of Owner under the Management Agreement; (b) whether or not possession of the Project is taken, to receive all funds, issues, and profits under the Management Agreement (other than management fee payable to and earned by Manager in accordance with the terms and provisions thereof) and apply the same, less costs and expenses of taking possession of the Project, operation and collection, including reasonable attorneys' fees, upon any obligations due under the Loan Documents whether or not then due and in such order as City may determine; (c) enforce or terminate (with or without cause) the Management Agreement; (d) require Owner to install substitute management acceptable to City; and (e) do any acts which City deems proper to protect the Project or City's security interest therein or lien thereon, and thereupon and without further notice to Owner, Owner shall not have any further rights under the Management Agreement which would conflict with, impair, or interfere with any rights of City hereunder. Neither City's entering upon and taking possession of the Project nor the exercise of any of the aforesaid remedies shall cure or waive any such default on the part of Owner or waive, modify or affect any notice of default under the Loan Agreement or invalidate any act done pursuant to such notice. Any exercise by City of the right to terminate the Management Agreement shall be without liability to City for payment of any fees, charges or otherwise, notwithstanding any provisions in the Management Agreement to the contrary. After any such termination, City shall have the right to replace Manager with a manager selected by City in its sole discretion. Upon any termination of the Management Agreement, whether or not pursuant to this section, Manager agrees to deliver copies of all records, files, financial statements, and any other documents pertaining to management, construction, design and operation of the Project which are in the possession or under the control of Manager to Owner excluding, however, documents pertaining solely to the operation systems or procedures owned by Manager.

9. ***Notice by City***. A notice in writing by City to Manager advising Manager that a Default exists and requesting that all future performance under the Management Agreement be made to City (or its agent), shall be construed by Manager as conclusive authority to Manager that such performance is to be made to City (or its agent) and Manager shall be fully protected in making such performance to City; and Owner hereby irrevocably constitutes and appoints City the attorney-in-fact and agent of Owner, which appointment is effective solely upon a Default, for the purpose of endorsing the consent of Owner on any such notice. The foregoing power is coupled with an interest and shall survive the liquidation, bankruptcy or insolvency of Owner.

10. ***Attornment by Manager***. Manager hereby agrees that in the event of notification to Manager by City that City has acquired possession of the Project or obtained the appointment of a receiver for same, Manager shall, at City's request, attorn to City as owner thereunder; *provided*, however, that in no event shall City be liable for, or be obligated to cure, any default of Owner occurring prior to the date of such notification.

11. ***No Limitations***. Owner and Manager agree that (a) nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted to City under any of the Loan Documents, and (b) an action to foreclose may be commenced, notwithstanding that Owner continues in possession of the Project, both real and personal, herein referred to, and continues to collect the rents, issues and profits thereof.

12. ***No Waiver***. This Assignment can be extended, modified or amended only in writing executed by Manager and Owner and consented to by the City, and none of the rights or benefits of City can be waived permanently except in a written document executed by City. City's rights, powers, privileges and remedies under or in connection with this Assignment are cumulative and not exclusive and shall not be waived, precluded or limited by any failure or delay in the exercise thereof or by the parties exercise thereof or by any course of dealing between Manager and/or Owner and City. No notice to or demand on Manager or Owner in any case shall entitle Manager or Owner to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of City to any other or further action in any circumstances without notice or demand.

13. ***Counterparts***. This Assignment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed, including by transmission of facsimile, in

any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. In the event this Assignment or any amendment, waiver, consent or supplement shall have been executed by transmission of facsimile, any party may request that the parties thereto execute original documents for record purposes, but no failure of any party to do so shall invalidate or in any other way affect the validity of such document. This Assignment shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the parties of written or telephonic notification of such execution and authorization of delivery thereof.

14. ***Descriptive Headings; Recitals***. The descriptive headings used in this Assignment are for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof. The Recitals set forth at the beginning of this Assignment are hereby incorporated into the substantive provisions of this Assignment.

15. ***Notices***. Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder shall be given in conformity with the terms and conditions of the Loan Agreement and to the parties hereto at the addresses set forth above.

16. ***Benefit of Agreement***. This Assignment shall be binding upon each party hereto and its successors and assigns, and shall inure to the benefit of Owner, Borrower, City, and Manager and their respective successors and/or assigns, except the rights and remedies of Owner, Borrower, City, and Manager under this Assignment shall not inure to the benefit of (a) any purchaser of the Project at a foreclosure sale, (b) any Person taking title to the Project by deed in lieu of foreclosure, or (c) any successor or assign of any Person described in clauses (a) and (b) above, except that Owner's, Borrower's, City's, and Manager's rights shall inure to the benefit of the parties described in clauses (a), (b) and (c) hereof if such parties are City (including, for these purposes, its successors and assigns as holder of the Loan Documents), and any participant's or any of City's (or such successors, assigns, beneficiaries or participant's) affiliates or nominees.

17. ***Inconsistencies***. In the event of any inconsistency between the terms and conditions hereof and the terms of the Management Agreement, the terms and conditions set forth herein shall govern.

18. ***Severability***. In the event that any of the covenants, agreements, terms or provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

19. ***Further Assurances***. At any time, and from time to time, upon City's request, Owner and Manager shall make, execute and deliver, or cause to be made, executed and delivered, to City and, where appropriate, shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled, at such time and in such offices and places as shall be deemed desirable by City, such documents and/or instruments as City may consider necessary or desirable in order to effectuate, or to continue and preserve, the obligations of Owner and Manager under this Assignment. Upon any failure by either Owner or Manager to do so, City may make, execute, record, file, re-record or refile any and all such documents and/or instruments for and in the name of either Owner or Manager, and Owner and Manager hereby irrevocably appoint (which appointment is coupled with an interest with full power of substitution) City the agent and attorney-in-fact of either Owner or Manager to do so; and Owner and Manager shall reimburse City, on demand, for all costs and expenses (including reasonable attorneys' fees and expenses) incurred by City in connection therewith.

20. ***Choice of Law and Venue***. **THIS ASSIGNMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS (BUT NOT THE RULES GOVERNING**

CONFLICTS OF LAWS) OF THE STATE OF TEXAS AND SHALL BE PERFORMABLE IN HARRIS COUNTY, TEXAS.

21. ***WAIVER OF JURY TRIAL***. THE PARTIES TO THIS ASSIGNMENT HEREBY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR ARISING OUT OF, OR IN ANY WAY RELATING TO THIS ASSIGNMENT.

SIGNATURE PAGE
COLLATERAL ASSIGNMENT
OF PROPERTY MANAGEMENT CONTRACT

IN WITNESS WHEREOF, each of the parties hereto has executed and delivered this Assignment or has caused the same to be executed and delivered by its duly authorized representative as of the date first above written.

OWNER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

BORROWER:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

MANAGER

_____

By:_____
Name:_____
Title:_____

ATTACHMENT L
TO LOAN AGREEMENT

ASSIGNMENT OF ARCHITECT'S CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT

ASSIGNMENT OF ARCHITECT'S CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT

FOR VALUE RECEIVED, **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership (**"Owner"**), whose mailing address is: 2640 Fountain View Drive, Houston, Texas 77057, as additional security for the obligations incurred by **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation (**"Borrower"**), pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the **"City Loan Agreement"**), between the Borrower, Owner and **THE CITY OF HOUSTON** (**"City"**), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of $25,000,000.00 (**"City Loan"**), which is secured by among other collateral, a Fee Deed of Trust on the Project described below as well as the Collateral Assignment described below. The proceeds of the City Loan were utilized by Borrower to make a $25,000,000.00 (**"Owner Loan"**) to Owner for the construction of the project located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 (**"Project"**) and which Owner Loan and all documents executed in connection therewith including a Leasehold Deed of Trust on the Project were collaterally assigned to the City pursuant to a certain Collateral Assignment of Note and Liens (**"Collateral Assignment"**) executed by Borrower, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of Owner in and to that certain architect contract by and between Owner and _____ (**"Architect"**), dated _____ (**"Contract"**) and in and to those certain architectural drawings and plans and specifications (**"Plans and Specifications"**) therefor, all inclusive, all of which were prepared by Architect, a true and correct copy of the Contract and Plans and Specifications having been deposited with and held by City. Upon the satisfaction in full of the obligations of Borrower to City evidenced by the City Loan Agreement and the Restrictive Covenants and other documents executed in connection therewith (**"City Loan Documents"**), this Assignment of Architect's Contract, Plans and Specifications, and Consent (**"Assignment"**) shall become null and void.

Owner and Architect, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Owner's obligations or duties concerning the Contract and Plans and Specifications, including, but not limited to, the obligation to pay for the preparation of the Contract and Plans and Specifications, until and unless City shall exercise its rights, granted hereby, to the use of the Contract and Plans and Specifications.

Owner hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Owner's rights with respect to the Contract and Plans and Specifications, to give appropriate receipts, releases and satisfactions for and on behalf of Owner and to do any and all acts in the name of Owner or in the name of City with the same force and effect as Owner could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred and is continuing, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), Owner hereby represents and warrants to City that no previous assignment of its interest in the Contract and Plans and Specifications has been made; and Owner agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract and Plans and Specifications so long as this Assignment is in effect.

Capitalized terms utilized herein which are not defined herein shall have the meaning specified in the City Loan Agreement.

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Signature Page

Assignment of Architect's Contracts, Plans and Specifications and Consent

DATED to be effective as of _____, 2021.

OWNER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

[ARCHITECT'S CONSENT FOLLOWS]

CONSENT OF ARCHITECT

The undersigned ("**Architect**") represents to City that (i) to the best of Architect's knowledge, the Plans and Specifications are the plans and specifications to be used in the actual construction of the Project; (ii) Architect, or all applicable principals or agents of Architect, are duly licensed to perform, conduct and engage in such activities and business as are contemplated under the Contract in the jurisdiction or jurisdictions where such activities, business or work is to be performed and in which the Project is, or will be, located or constructed; (iii) the Project has been designed, as evidenced by the Plans, in accordance with all applicable architectural barriers law including, without limitation, the Americans With Disabilities Act (42 U.S.C. §§ 12131-12165; 47 U.S.C. §§ 155, 201, 218 and 255), The Architectural Barriers Act of 1968 (42. U.S.C. §§ 415-4157), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) and Tex. Gov't Code Ann. § 469.001 et seq., as amended, ordinances, rules and regulations, and that all permits, certificates or other licenses evidencing same have been obtained and will be delivered to City upon request therefore; and (iv) the Contract is in full force and effect and is valid, binding and enforceable against Architect in accordance with its terms and there is no default by Architect thereunder.

Architect hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any default by Borrower or Owner under the City Loan Agreement or any City Loan Document executed pursuant thereto, City is authorized to use the Contract and Plans and Specifications for the purpose of the inspection or completion of the construction of the Project and for the maintenance and protection of the Project contemplated by the City Loan Agreement.

To induce City to enter into the City Loan Agreement with Borrower, Architect hereby agrees that all of the liens which Architect may have or be entitled to either against such Contract and Plans and Specifications or against the Project contemplated by the City Loan Agreement (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deeds of Trust and other liens and security interests securing the performance of the Owner Loan.

Architect acknowledges that City is relying and is entitled to rely on Architect's professional skill and competence in the provision of construction management services under the Contract.

DATED to be effective as of _____, 2021.

ARCHITECT:

_____

By:_____
Name:_____
Title:_____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A

Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE UPDATED IF SURVEY CHANGES)

ATTACHMENT M
TO LOAN AGREEMENT

ASSIGNMENT OF CONSTRUCTION CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT

ASSIGNMENT OF CONSTRUCTION CONTRACT, PLANS AND SPECIFICATIONS, AND CONSENT

FOR VALUE RECEIVED, **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership (**"Owner"**), whose mailing address is: 2640 Fountain View Drive, Houston, Texas 77057, as additional security for the obligations incurred by **APV REDEVELOPMENT CORPORATION** a Texas non-profit corporation (**"Borrower"**), pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the **"City Loan Agreement"**), between the Borrower, Owner and **THE CITY OF HOUSTON** (**"City"**), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of $25,000,000.00 (**"City Loan"**), which is secured by among other collateral, a Fee Deed of Trust on the Project described below as well as the Collateral Assignment described below. The proceeds of the City Loan were utilized by Borrower to make a $25,000,000.00 (**"Owner Loan"**) to Owner for the construction of the project located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 (**"Project"**) and which Owner Loan and all documents executed in connection therewith including a Leasehold Deed of Trust on the Project were collaterally assigned to the City pursuant to a certain Collateral Assignment of Note and Liens (**"Collateral Assignment"**) executed by Borrower, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of Owner in and to that certain construction contract by and between Owner and _____ (**"Contractor"**), dated _____ (**"Contract"**), a true and correct copy of the Contract having been deposited with and held by City. Upon the payment and satisfaction in full of the obligations of Borrower to City evidenced by the City Loan and the loan documents executed in connection with or securing the City Loan (**"City Loan Documents"**) and upon delivery of written confirmation by City of such payment and satisfaction, this Assignment of Construction Contract, and Consent (**"Assignment"**) shall become null and void.

Owner and Contractor, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Owner's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract.

Owner hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Owner's rights with respect to the Contract to give appropriate receipts, releases and satisfactions for and on behalf of Owner and to do any and all acts in the name of Owner or in the name of City with the same force and effect as Owner could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred and is then continuing, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), Owner hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and Owner agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

Capitalized terms utilized herein which are not defined herein shall have the meaning specified in the City Loan Agreement.

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Signature Page

Assignment of Construction Contract and Consent

DATED to be effective as of _____, 2021.

OWNER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

[CONTRACTOR'S CONSENT FOLLOWS]

CONSENT OF CONTRACTOR

The undersigned ("**Contractor**") represents to **THE CITY OF HOUSTON** ("**City**") that the Contract (as defined in that certain Assignment of Construction Contract and Consent ("**Assignment**") which immediately precedes this Consent of Contractor (this "**Consent**") is the contract to be used in the actual construction and completion of the work for the Project; and Contractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by Borrower or Owner under the City Loan Agreement or any document or instrument executed pursuant thereto, City is authorized to use the Contract for the purpose of completing construction work for the Project contemplated by the City Loan Agreement.

Contractor acknowledges that City is relying and is entitled to rely on Contractor's professional skill and competence in the provision of construction services under the Contract. To induce City to enter into the City Loan Agreement and the other City Loan Documents with Borrower, Contractor hereby agrees that all of the liens which Contractor may have or be entitled to either against such Contract or against the Project contemplated by the City Loan Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deeds of Trust and liens and security interests of the liens and security interests securing the payment of the loan or loans to be made pursuant to the Loan Documents.

DATED to be effective as of _____, 2021.

CONTRACTOR:

_____

By:_____
Name: _____
Title: _____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A

Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE UPDATED IF SURVEY CHANGES)

ATTACHMENT M-2
TO LOAN AGREEMENT

ASSIGNMENT OF CONSTRUCTION
CONTRACT AND CONSENT (SUBCONTRACT)

ASSIGNMENT OF CONSTRUCTION CONTRACT AND CONSENT (SUBCONTRACT)

FOR VALUE RECEIVED, **APV REDEVELOPMENT CORPORATION** a Texas non-profit corporation ("**General Contractor**"), whose mailing address is: 2640 Fountain View Drive, Houston, Texas 77057, as additional security for the obligations incurred by **APV REDEVELOPMENT CORPORATION** a Texas non-profit corporation ("**Borrower**"), pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the "**City Loan Agreement**"), between the Borrower, **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership ("**Owner**") and **THE CITY OF HOUSTON** ("**City**"), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of $25,000,000.00 ("**City Loan**"), which is secured by among other collateral, a Fee Deed of Trust on the Project described below as well as the Collateral Assignment described below. The proceeds of the City Loan were utilized by Borrower to make a $25,000,000.00 ("**Owner Loan**") to Owner for the construction of the project located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 ("**Project**") and which Owner Loan and all documents executed in connection therewith including a Leasehold Deed of Trust on the Project were collaterally assigned to the City pursuant to a certain Collateral Assignment of Note and Liens ("**Collateral Assignment**") executed by Borrower, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of General Contractor in and to that certain construction contract by and between General Contractor and_____ ("**Subcontractor**"), a true and correct copy of the Contract having been deposited with and held by City. Upon the payment and satisfaction in full of the obligations of Borrower and Owner to City evidenced by the City Loan Agreement and the other Loan Documents (as defined in the City Loan Agreement and referred to herein as the "**Loan Documents**"), this Assignment of Construction Contract and Consent ("**Assignment**") shall become null and void.

General Contractor and Subcontractor, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of General Contractor's or Owner's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract.

General Contractor hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce General Contractor's rights with respect to the Contract, to give appropriate receipts, releases and satisfactions for and on behalf of General Contractor to do any and all acts in the name of General Contractor or in the name of City with the same force and effect as General Contractor could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred and continues beyond all applicable, notice grace and cure periods, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), General Contractor hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and General Contractor agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

This Agreement may be signed and delivered electronically or by electronic signature and that electronic signature will be as good, binding and effective as an original or manual signature.

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Signature Page

Assignment of Construction Contract and Consent (Subcontract)

DATED to be effective as of _____ ___, 2020.

GENERAL CONTRACTOR:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

[SUBCONTRACTOR'S CONSENT FOLLOWS]

CONSENT OF SUBCONTRACTOR

The undersigned (**"Subcontractor"**) represents to **THE CITY OF HOUSTON** (**"City"**) that the Contract (as defined in that certain Assignment of Construction Contract and Consent (Subcontract) (**"Assignment"**) which immediately precedes this Consent of Subcontractor (this **"Consent"**) is the contract to be used in the actual construction of the Project; and Subcontractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by Borrower or Owner under and as defined in the City Loan Agreement or any Loan Document then exists that continues beyond the expiration of all applicable notice, grace and cure periods, City is authorized to use the Contract for the purpose of completing construction work for the Project contemplated by the City Loan Agreement.

Subcontractor acknowledges that City is relying and is entitled to rely on Subcontractor's professional skill and competence in the provision of construction services under the Contract.

To induce City to enter into the Loan Documents with Borrower and Owner, Subcontractor hereby agrees that all of the liens which Subcontractor may have or be entitled to either against such Contract or against the Project contemplated by the Loan Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deeds of Trust and liens and security interests of the liens and security interests securing the payment of the City Loan.

This Agreement may be signed and delivered electronically or by electronic signature and that electronic signature will be as good, binding, and effective as an original or manual signature.

DATED to be effective as of _____, 2021.

SUBCONTRACTOR:

_____

By:_____

Name:_____

Title:_____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A

Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO CHANGE IF SURVEY UPDATED)

ATTACHMENT N
TO LOAN AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

This **ENVIRONMENTAL INDEMNITY AGREEMENT** ("**Environmental Indemnity Agreement**") is executed effective as of _____, 2021, by **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation ("**Borrower**"), and **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership ("**Owner**", and collectively, jointly and severally, with Borrower, "**Indemnitor**") for the benefit of **THE CITY OF HOUSTON** ("**Lender**").

W I T N E S S E T H:

WHEREAS, Lender is making a loan ("**Loan**") to Borrower in the original principal amount of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00) and further evidenced by that certain Loan Agreement entered into by and between Lender, Borrower and Owner ("**Loan Agreement**"), secured, inter alia, by, among other collateral, a Deed of Trust, Security Agreement and Financing Statement ("**Fee Deed of Trust**") which Borrower has executed and delivered to Tom McCasland, as Trustee ("**Trustee**"), for the benefit of Lender on the Property (as defined below) and a Collateral Assignment of Note and Lien ("**Collateral Assignment**") covering that certain Note ("**Collateral Note**") executed by Owner and payable to the order of Borrower in the original principal amount of TWENTY FIVE MILLION AND NO/100 DOLLARS ($25,000,000.00 secured by that certain Leasehold Deed of Trust, Security Agreement and Financing Statement ("Leasehold **Deed of Trust**") which Owner has executed and delivered to Trustee, for the benefit of Borrower and collaterally assigned to Lender, covering certain real property ("**Land**") described in Exhibit "A" attached hereto, together with the improvements, buildings, facilities located thereon and certain personal property described in the Deed of Trust (the Land, together with said improvements, buildings, facilities and personal property referred to herein as the "**Property**") The Loan Agreement, the Collateral Assignment, the Collateral Note, the Fee Deed of Trust, the Leasehold Deed of Trust, this Environmental Indemnity Agreement and all other documents or instruments evidencing, securing or pertaining to the Loan shall be collectively referred to as the "**Loan Documents**"; and

WHEREAS, as a material inducement in order for Lender to make the Loan to Indemnitor, Indemnitor has agreed to execute and deliver this Environmental Indemnity Agreement to and for the benefit of Lender.

NOW, THEREFORE, for and in consideration of the making of the Loan by Lender to Indemnitor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Indemnitor hereby agrees as follows:

A G R E E M E N T:

Article I. DEFINITIONS

The following terms shall have the defined meanings ascribed to such terms, as set forth below:

"**Environmental Laws**" shall mean any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; Resource, Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("**CWA**"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("**CAA**"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. § 1251 et seq.; any related federal laws and

authorities as required by the Housing and Community Development Act of 1974, as listed in 24 CFR § 58 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("**TWC**") § 26.001 et seq.; Texas Health & Safety Code ("**THSC**") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

"**Hazardous Substances**" shall mean any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(9) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(13) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

"**Hazardous Substances Contamination**" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Substances, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Substances at any time (whether before or after the date of the Note) emanating from the Property.

Article II.
REPRESENTATIONS AND WARRANTIES

Indemnitor unconditionally represents and warrants to Lender as follows:

(a) The Property does not contain any Hazardous Substances, and the Property is not subject to any Hazardous Substances Contamination.

(b) The Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any governmental authority or any Environmental Laws.

(c) All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of any Hazardous Substances into the environment, have been duly obtained or filed.

(d) Neither Indemnitor nor, to the best knowledge of Indemnitor, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, under, from or about the Property of any Hazardous Substances or the transportation to or from the Property of any Hazardous Substances.

(e) To Indemnitor's knowledge, no property adjoining the Property is or has ever been

used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Substances, nor, to Indemnitor's knowledge, is any other property adjoining the Property affected by Hazardous Substances Contamination.

(f) Neither Indemnitor nor, to the best knowledge of Indemnitor, any other person, including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever undertaken, caused, permitted, authorized, or suffered the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal of any Hazardous Substances on, under, from or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Indemnitor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

(g) To Indemnitor's knowledge, no inquiry, investigation, administrative order, consent order and agreement, litigation or settlement is proposed, threatened, anticipated or in existence with respect to any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property. Indemnitor has not received any notice, and has no actual or constructive knowledge, that any governmental authority has determined, or threatens to determine, or is investigating any allegations that there has been, there is currently, or there is a threat of a presence, release, threat of release, placement of any Hazardous Substances on, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal of any Hazardous Substances on, under, from or about the Property, or the transportation of any Hazardous Substances to or from the Property.

(h) Indemnitor has taken all steps reasonably necessary to determine that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Property.

Article III. COVENANTS

Indemnitor unconditionally covenants that and agrees with Lender as follows:

(a) Indemnitor will not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, under, from or about the Property or transport to or from the Property any Hazardous Substances or allow any other person or entity to do so.

(b) Indemnitor will keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law.

(c) Indemnitor will establish and maintain, at Indemnitor's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Property, by any and all owners or operators, including tenants, of the Property, which system shall include annual reviews of such compliance by employees or agents of Indemnitor who are familiar with the requirements of the Environmental Laws and, at the request of Lender no more than once each year, a detailed review of such compliance of the environmental condition of the Property (the "**Environmental Report**") in scope satisfactory to Lender by an environmental consulting firm approved in advance by Lender; provided, however, that if any Environmental Report indicates any violation of any Environmental Laws or a need for remedial work ("**Remedial Work**"), such system shall include at the request of Lender a detailed review of the status of such violation (a "**Supplemental Report**") by such environmental consultant. Indemnitor shall furnish an Environmental Report or such Supplemental Report to the Lender within sixty (60) days after Lender so requests, together with such additional information as Lender may reasonably request.

(d) Indemnitor will give prompt written notices to Lender of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substances on, under, from or about the Property, the migration thereof from or to other property, the disposal, storage, or treatment of any Hazardous Substances generated or used on, under or about the Property, (ii) all claims made or threatened by any third party against Indemnitor or the Property or any other owner or operator, including a tenant, of the Property relating to any loss or injury resulting from any Hazardous Substances, and (iii) Indemnitor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any investigation or cleanup of the Property pursuant to any Environmental Laws.

(e) Indemnitor will permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Laws or Hazardous Substances, and Indemnitor shall pay all attorneys' fees incurred by Lender in connection therewith.

(f) In the event that any Remedial Work is reasonably necessary or desirable, Indemnitor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Lender for performance thereof (or such shorter period of time as may be required under any Environmental Laws). All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Indemnitor including, without limitation, Lender's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Indemnitor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured by the Fee Deed of Trust and Leasehold Deed of Trust (**"Indebtedness"**) and shall be payable to Lender upon demand.

Article IV. DEFAULT

The term "Default", as used herein, shall mean the occurrence at any time and from time to time, of any one or more of the following:

(a) If either Indemnitor or Lender acquires knowledge or receives notice that Hazardous Substances or Hazardous Substances Contamination exists in, on, about or under any of the Property, and Indemnitor fails, within thirty (30) days after acquisition of such knowledge or of such notice, to commence and thereafter diligently prosecute to completion any necessary remedial actions in compliance with Environmental Laws.

(b) If any representation or warranty contained herein shall be false or misleading, or erroneous in any material respect.

Article V. REMEDIES

If a Default shall occur, Lender may, at Lender's sole election and by or through Trustee or otherwise, exercise any or all of the following:

(a) Declare all unpaid amounts under the Note and any other unpaid portion of the Indebtedness immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by Indemnitor), whereupon the same shall become immediately due and payable.

(b) Exercise any and all other rights, remedies and recourses granted under the Loan Documents or as may be now or hereafter existing in equity or at law, by virtue of statute or otherwise, including actions for damages and specific performance.

Article VI. SITE ASSESSMENTS

If Lender shall ever have reason to believe that there are Hazardous Substances or Hazardous Substances Contamination affecting any of the Property, Lender (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the **"Site Reviewers"**) to perform environmental site assessments (**"Site Assessments"**) on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Property arising under any state, federal or local law, rule or regulation relating to Hazardous Substances. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Indemnitor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of any Hazardous Substances on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Indemnitor will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lender shall make the results of such Site Assessments fully available to Indemnitor, which (prior to a Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Indemnitor upon demand of Lender and any such obligations shall be Indebtedness secured by the Fee Deed of Trust and the Leasehold Deed of Trust.

Article VII. INDEMNIFICATION

REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, INDEMNITOR SHALL JOINTLY AND SEVERALLY PROTECT, INDEMNIFY, AND HOLD HARMLESS TRUSTEE AND LENDER, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER, ABOUT OR FROM THE PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF AND REGARDLESS OF WHETHER OR NOT CAUSED BY, OR WITHIN THE CONTROL OF INDEMNITOR, INCLUDING WITHOUT LIMITATION (I) DAMAGES FOR PERSONAL INJURY, OR INJURY TO PROPERTY OR NATURAL RESOURCES OCCURRING UPON OR OFF THE PROPERTY, FORESEEABLE OR UNFORESEEABLE, INCLUDING, WITHOUT LIMITATION, THE COST OF DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS ON THE REAL PROPERTY, INTEREST AND PENALTIES; (II) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS INCLUDING FEES INCURRED FOR ATTORNEYS, CONSULTANTS, CONTRACTORS, EXPERTS AND LABORATORIES; AND (III) LIABILITY TO ANY THIRD PERSON OR ANY GOVERNMENTAL AUTHORITY TO INDEMNIFY SUCH PERSON OR GOVERNMENTAL AUTHORITY FOR COST EXPENDED IN CONNECTION WITH THE ITEMS REFERENCED IN SUBPARAGRAPH (II) IMMEDIATELY ABOVE. THIS COVENANT AND THE INDEMNITY CONTAINED HEREIN SHALL SURVIVE THE RELEASE OF THE LIEN OF THE FEE DEED OF TRUST AND/OR THE LEASEHOLD DEED OF TRUST, OR THE EXTINGUISHMENT OF THE LIEN OF THE FEE DEED OF TRUST AND?OR THE LEASEHOLD DEED OF TRUST BY FORECLOSURE OR ACTION IN LIEU THEREOF

AND SHALL CONTINUE IN EFFECT SO LONG AS A VALID CLAIM MAY BE LAWFULLY ASSERTED AGAINST LENDER.

Article VIII.
LENDER'S RIGHT TO REMOVE HAZARDOUS MATERIALS

Lender shall have the right but not the obligation, without in any way limiting Lender's other rights and remedies under the Loan Documents, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substances or Hazardous Substances Contamination on the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Substances or Hazardous Substances Contamination pertaining to the Property or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property or other action and/or which, in Lender's reasonable opinion, could jeopardize Lender's security under the Loan Documents; provided, however, Lender shall have no right to proceed with any of the rights granted to it in this paragraph until Lender has provided Indemnitor with written notice of Lender's intent to take any of the actions described in this paragraph and Indemnitor fails to commence within thirty (30) days following Indemnitor's receipt of such notice and diligently proceeds thereafter to complete all action necessary to clean-up, remove or resolve any of the foregoing. All reasonable costs and expenses paid or incurred by Lender in the exercise of any such rights shall be included in the indebtedness secured by the Loan Documents and shall be payable by Indemnitor upon demand.

Article IX. MISCELLANEOUS

This Environmental Indemnity Agreement are joint, several and unconditional and shall not be subject to any exculpation, non-recourse or other limitation of liability provisions in the Loan Documents, and Indemnitor acknowledges that its obligations under this Environmental Indemnity Agreement are not limited by such exculpation, non-recourse or similar limitation of liability provisions in the Loan Documents (if any).

Those costs, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) for which Lender is indemnified hereunder shall be reimbursable to Lender after being paid by Lender, and Indemnitor shall pay such costs, expenses, damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) to Lender within ten (10) days after notice from Lender itemizing the amounts paid to the date of such notice. In addition to any remedy available for failure to periodically pay such amounts, such amounts shall thereafter bear interest at the Default Rate (as defined in the Note) of interest specified in the Loan Documents. Payment by Lender shall not be a condition precedent to the obligations of Indemnitor under this Environmental Indemnity Agreement.

Any notice, communication, request or other documents or demand permitted or required hereunder shall be in writing and given in accordance with the provisions of the Loan Documents.

THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN TEXAS PROVIDED, HOWEVER, THAT EITHER FEDERAL LAW OR, TO THE EXTENT FEDERAL LAW DOES NOT APPLY, THE LAW OF THE SITUS OF THE PROPERTY SHALL BE APPLIED TO DETERMINE THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS. PROVIDED FURTHER, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED SHALL APPLY TO THE CREATION, PERFECTION, AND PRIORITY OF LIENS AND SECURITY INTERESTS AND TO ANY FORECLOSURE, TRUSTEE'S SALE, APPOINTMENT OF RECEIVER OR OTHER REMEDY WITH RESPECT TO THE PROPERTY. ANY PROCEDURES PROVIDED HEREIN FOR SUCH REMEDIES SHALL BE MODIFIED BY AND REPLACED WITH, WHERE INCONSISTENT WITH OR REQUIRED BY, ANY PROCEDURES OR REQUIREMENTS OF THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

ANY LEGAL ACTION TO INTERPRET OR ENFORCE ANY TERM OR CONDITION OF THIS ENVIRONMENTAL INDEMNITY AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN THE TEXAS STATE COURTS SITUATED IN THE CITY OF HOUSTON AND COUNTY OF HARRIS, TEXAS. BY EXECUTING THIS ENVIRONMENTAL INDEMNITY AGREEMENT, INDEMNITOR EXPRESSLY (A) CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF SUCH TEXAS AND FEDERAL COURTS, (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CL AIM OR DEFENSE THAT HARRIS COUNTY, TEXAS IS NOT A PROPER OR CONVENIENT VENUE OR FORUM, AND (C) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

Indemnitor waives any acceptance of this Environmental Indemnity Agreement by Lender.

The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party, nor excuse any of the parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Environmental Indemnity Agreement is subject to enforcement at law and/or equity, including actions for damages and/or specific performance.

Time is of the essence in the performance of the terms, conditions and covenants herein contained.

This Environmental Indemnity Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive any exercise of any remedy by Lender under the Loan Documents, including foreclosure of the liens of the Loan Documents (or deed in lieu thereof), even if, as part of such foreclosure or deed in lieu of foreclosure, the Loan amount is satisfied in full.

All terms not defined in this Environmental Indemnity Agreement shall have the same meanings as given them in the Loan Documents.

[SIGNATURE PAGE FOLLOWS]

Signature Page

Environmental Indemnity Agreement

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

INDEMNITOR:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

EXHIBIT A

Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68.009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE UPDATED IF SURVEY CHANGES)

ATTACHMENT O
TO LOAN AGREEMENT

BONDS

Project No.

ONE YEAR MAINTENANCE BOND

STATE OF TEXAS §
§
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as Principal, hereinafter called "**Contractor**", and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership ("**Obligee**"), in the sum of _____Dollars ($_____) for the payment of which sum to be made to the Obligee and its successors, Contractor and Surety do bind themselves, their successors and assigns jointly and severally. The conditions of this obligation are such that:

WHEREAS, the Contractor has entered into that certain construction contract with the Obligee, dated of even date herewith, for the construction of a one hundred ninety seven (197) unit apartment complex located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 ("**Contract**"), with all of such work to be done in accordance with the documents executed in connection with the Contract (collectively, the "**Contract Documents**"), and referred to in the loan agreement dated of approximate even date herewith between the City of Houston and Obligee which was adopted by the City Council of the City of Houston.

NOW THEREFORE, if the Contractor shall comply with the provisions of the general conditions of that certain construction contract by and between _____ and _____, dated as of _____, and correct work which is not in accordance with the Contract Documents discovered within the established one (1) year period, then this obligation shall become null and void and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

IN WITNESS THEREOF, the Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached their current Power of Attorney.

ATTEST, SEAL: (If a corporation)
WITNESS: (if not a corporation)

_____
(Contractor)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST/WITNESS: **(SEAL)**

_____
(Full Name of Surety)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

THE FOREGOING BOND IS ACCEPTED ON BEHALF OF THE OWNER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

TEXAS STATUTORY PAYMENT BOND
(Property Code - Private Work)

[NOTE: Penalty of this bond must be 100% of Contract amount. This bond and copy or memorandum of the construction contract must be filed with County Clerk of County where owner's property is located.]

KNOW ALL MEN BY THESE PRESENTS:

That,_____
_____, the original contractor (hereinafter called the "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____ and duly authorized and admitted to do business in, and licensed to execute surety bonds by, the State of Texas (hereinafter called the "Surety"), as Surety, are held and firmly bound unto **2100 MEMORIAL REDEVELOPMENT, LP** (hereinafter called the "Owner"), as Owner, in the amount of _____ Dollars ($_____) for the payment whereof the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 2021, to _____, to be located on the land described in Exhibit "A" attached hereto (hereinafter called the "Contract"), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length hereto, and a copy of said Contract (but without the plans, specifications and general conditions of said Contract) or a memorandum of the Contract is attached hereto as Exhibit "B".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal shall well and faithfully make prompt payment to each and every claimant for labor, subcontracts, materials, and specially fabricated materials performed or furnished under or by virtue of said contract and duly authorized normal and usual extras thereto (not to exceed 15% of said contract price), then this obligation shall be void; otherwise to remain in full force and effect; labor, subcontracts, materials and specially fabricated materials shall be construed in accordance with Sections 53.001, *et seq.* of the Texas Property Code, as amended.

PROVIDED, HOWEVER, that the Owner having required the said Principal to furnish this bond in order to comply with the provisions of Sections 53.201 *et seq.* of the Texas Property Code, as currently amended, all rights and remedies under this bond shall be determined in accordance with the provisions, conditions, and limitations of said statute to the same extent as if it were copied at length herein.

Any notices of claims under this Bond should be sent to:

_____ Insurance Company
[Mailing & Physical Address]_____
_____
_____
_____
Telephone No. for Claims: _____-_____-_____

STATEMENT: The address of the Surety to which any notices of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number maintained by the Texas Department of Insurance as follows:

Texas Department of Insurance
Toll free Telephone Number: 800-252-3439

[The undersigned Surety hereby certifies that it currently holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law.]

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument, this _____ day of _____, 2021.

PRINCIPAL:

_____,
a _____

By:_____ (Seal)
Name: _____
Title: _____

SURETY:

_____,
a _____

By:_____
Name: _____
Title: _____

[Attach Power of Attorney for Surety's Attorney-in-Fact.]

The foregoing bond is hereby approved.

OWNER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was ACKNOWLEDGED before me on _____, 20___, by _____, _____ of _____, a _____, on behalf of said _____.

[S E A L]

_____
Notary Public - State of Texas

My Commission Expires:

_____
Printed Name of Notary Public

_____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was ACKNOWLEDGED before me on _____, 20___, by _____, _____ of _____, a _____, on behalf of said _____.

[S E A L]

_____
Notary Public - State of Texas

My Commission Expires:

_____
Printed Name of Notary Public

_____

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation and sole member of 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company and sole general partner of **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership, on behalf of such corporation, limited liability company and limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____, 2021.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My Commission Expires:____

ATTACHMENTS:
Power of Attorney

Exhibit "A" – Land Description
Exhibit "B" – Contract of Memorandum

Document ___

PERFORMANCE BOND

THAT WE, _____, as Principal, (the "Contractor"), and the other subscriber hereto, _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston (the "City"), a municipal corporation, and **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership_ (individually, "Owner" and collectively with the City, the "Obligees"), in the penal sum of $_____ for the payment of which sum, well and truly to be made to Obligees, their successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with _____ for the construction of a 197-unit apartment complex located at 2100 Memorial Drive, Houston, Harris County, Texas 77007, Houston, Harris County, Texas, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that Obligees may suffer in consequence thereof, as more fully set forth herein.

It is further understood and agreed that the Surety does hereby relieve the Obligees or their representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that Owner will retain certain amounts due the Contractor until the expiration of 30 days from the acceptance of the Work is intended for the Obligee's benefit, and the Obligees will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the Obligees or their representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the Obligees from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the Obligee/s gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the Obligees, to perform and complete the Contract; or

2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the Obligees shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS WHEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

By: _____
Name:
Title:

_____
Name of Contractor

By: _____
Name:
Title:
Date:

ATTEST/SURETY WITNESS:

(SEAL)

_____
Full Name of Surety

_____
Address of Surety for Notice

_____

_____
Telephone Number of Surety

By: _____
Name:
Title:
Date:

By: _____
Name:
Title: Attorney-in-Fact
Date:

ATTACHMENT P
TO LOAN AGREEMENT

LOAN AGREEMENT (BORROWER/OWNER)

Loan Agreement

(Borrower/Owner)

This Loan Agreement ("**Agreement**") is made and entered into this the __ day of _____, 2021 by and between **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation ("**Lender**"), and **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership ("**Borrower**"), for the purposes and consideration hereinafter set forth.

WHEREAS, Lender has agreed to make a loan ("**Borrower Loan**") to Borrower in the original principal sum of $25,000,000.00 as evidenced by a note ("**Borrower Note**") of even date herewith and secured by a Leasehold Deed of Trust against the property described therein ("**Property**") and located on the Land, more particularly described in Exhibit A attached hereto;

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

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

1. Terms of Borrower Loan. The terms of the Borrower Loan are as follows:

(a) Note. Borrower's obligation to repay Lender is evidenced by a promissory note of even date herewith, payable to Lender in the original principal amount of $25,000,000.00.

(b) Purpose. The purpose of the loan is to acquire, demolish and construct senior affordable housing.

(c) Term. The term of the Loan shall commence on the date of Closing (as defined in the COH Loan Agreement (as defined below)) and shall mature on the Maturity Date (as defined in the Borrower Note).

(d) Interest. The Loan shall bear interest at the rate of one percent (1.00%) per annum payable after Project Completion (as defined in the COH Loan Agreement) until Maturity Date except that in the event of a Default (as defined below) while such Default is continuing under the Borrower Loan or any of the Loan Documents, at Lender's option the Borrower Loan shall accrue interest at default rate interest in the amount equal to the lower of the highest lawful rate or ten percent (10.0%) per annum. Interest shall be payable as set out in Borrower's Note and COH Loan Agreement.

2. COH Loan and COH Loan Agreement. The Borrower, Lender and the City of Houston ("**City**") have entered into one certain Loan Agreement ("**COH Loan Agreement**") of even date herewith with respect to a $25,000,000.00 loan ("**COH Loan**") from the City to Lender, the proceeds of which are funding the Borrower Loan. The Borrower Loan, this Agreement, the promissory note evidencing the Borrower Loan and all the Loan Documents executed in connection with or securing the Borrower Loan (including, without limitation, the Leasehold Deed of Trust securing the Borrower Loan) have been collaterally assigned to the City to secure the COH Loan. The covenants, obligations, requirements, representations and warranties of Borrower under the COH Loan Agreement, to the extent applicable to Borrower or the Property, or to the ability of the Parties to perform their obligations related to the Property and the COH Loan Agreement, are incorporated in to and made a part of this Agreement and shall additionally constitute covenants, obligations, requirements, representations and warranties of Borrower to Lender and the City, as a third party beneficiary of this Agreement and as a collateral assignee of the Loan Documents. Borrower, the Borrower Loan and the Property shall be subject to all terms and conditions of the COH Loan Agreement. Borrower specifically assumes and agrees to perform all of the covenants, obligations, and requirements to be performed by Borrower as "Owner" set forth in the COH Loan Agreement for the benefit of the City and confirms the

representations and warranties of Borrower as "Owner" thereunder for the benefit of the City and as a condition of the COH Loan and the Borrower Loan. In the event of a conflict between the terms and conditions of this Agreement and the COH Loan Agreement, the terms and conditions of the COH Loan Agreement shall control.

3. Funding.

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

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

4. Borrower's Representations and Warranties.

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

(a) Ownership of Property. Borrower will hold on the Closing Date (as defined in the COH Loan Agreement) of the COH Loan and thereafter a leasehold interest in and to the Property and shall provide the Director of the City's Housing and Community Development Department (**"Director"**) with a copy of the ground lease thereto. Borrower shall promptly disclose to the Director if Borrower leased the Property from Lender; or any director, officer, employee, partner, company or individual of, related to or affiliated with Lender or Borrower.

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

(c) Taxes and Assessments. There are no delinquent taxes, assessments, or other impositions on the Property, or if there are any delinquent taxes, assessments, or other impositions on the Property, same will be paid prior to or simultaneously with Closing of the COH Loan. The Property is currently exempt from all ad valorem taxes and has been exempt from said taxes in the five (5) years preceding the Effective Date of this Agreement. The Owner expects that the Land or Project shall continue to receive the same ad valorem exemption upon Final Closing.

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

(e) Authorization. All action on the part of Borrower necessary to authorize the transactions contemplated by this Agreement and the COH Loan Agreement has been

taken, and upon execution of this Agreement and the COH Loan Agreement, this Agreement shall constitute the binding and enforceable obligation of Borrower which shall be enforceable by the Lender and City in accordance with their terms. In addition, all of the covenants, obligations, and requirements set forth herein to be assumed by Borrower and the representations and warranties made hereunder by Borrower shall constitute the binding and enforceable covenants, obligations and requirements and representations and warranties of Borrower which shall be enforceable by the Lender and City in accordance with their terms.

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

(g) Approved Final Project Budget and Approved Final Construction Budget Contents. The Approved Final Project Budget (as defined in the COH Loan Agreement) and the Approved Final Construction Budget (as defined in the COH Loan Agreement) specifies, among other things, (a) a listing of all costs necessary to (i) complete the Work (as defined in the COH Loan Agreement) on the Project and (ii) reach a 92% occupancy level, and (b) the sources of funding which will be used to complete the Work and reach 92% occupancy;

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

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

(j) Access. Access by vehicles to the Project for the full utilization of the Project for its intended purposes either (a) exists over paved roadways dedicated to the public and accepted by the appropriate governmental authority, or (b) the necessary rights-of-way for such roadways have been acquired by the appropriate governmental authority and all necessary steps have been taken by Borrower and/or such governmental authority to assure the construction and installation of such roadways.

(k) Use of Project. During the Affordability Period, that portion of the Project specified in Section 6.8 of the COH Loan Agreement hereof shall be used solely for the purpose of housing for low and very low income residents in accordance with Section 6.8 thereof, and for no other purpose.

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

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

5. Default under this Agreement. The Lender may declare a default (**"Default"**) under this Agreement or any one or more of the Loan Documents upon the occurrence of any one or more of the following circumstances:

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

(b) Non-Monetary Default. If Borrower fails, refuses or neglects to perform fully and timely any obligation or breaches and covenant, condition, representation or warranty under this Agreement or any other Borrower Loan Document and such failure continues for thirty (30) days following written notice from Lender to Borrower, or, if the failure is not susceptible to cure within said 30-day period, such greater period of time (not to exceed sixty (60) days) as is necessary to cure such failure provided Borrower commences to cure such failure within said 30-day period and diligently works to cure such failure, provided however, that in the event that any such cure periods would cause a material violation to occur under applicable law or cause a recapture of any tax credits the notice and cure period shall be reduced to a length of time that would not cause a material violation of applicable law or cause such a recapture;

(c) Default under COH Loan Agreement by Borrower. Notwithstanding the foregoing, a "Default" (as defined by the COH Loan Agreement) under the COH Loan Agreement by Borrower shall immediately constitute a Default by Borrower under this Agreement. Notwithstanding the provisions of Subparagraphs 4(a) and 4(b) above, in the event of a conflict between the available notice and cure periods under the COH Loan Agreement and this Agreement, the COH Loan Agreement shall control, and upon the occurrence of a Default under the COH Loan Agreement, no further notice and/or cure periods shall be available under this Agreement for such event and such event shall immediately be deemed a Default by Borrower under this Agreement.

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

NEF ASSIGNMENT CORPORATION
10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606

7. Lender's Remedies. If a Default exists under this Agreement, Lender shall be entitled to exercise all rights and remedies available under the Loan Documents, without further notice or opportunity to cure by Borrower except as may be required by applicable law.

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

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

10. Amendments to Organizational Documents. Borrower shall not have the right to amend its organizational documents without Lender's and the City's prior written approval.

11. Removal of Borrower's General Partner (if any). Notwithstanding anything to the contrary contained in the Loan Documents but subject to the requirements of the COH Loan Agreement, if Borrower is a limited partnership, the removal and/or replacement of Borrower's general partner for cause in accordance with the terms of Borrower's partnership agreement shall

not require Lender's consent, constitute a default under the Loan Documents or accelerate the maturity of the Loan, but shall be subject to the terms and conditions of the COH Loan Agreement.

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

(a) The transfer and/or the assignment by the Tax Credit Investor (if any) of its interest in Borrower to an entity controlled or managed by an entity that is related to or under common control with the Tax Credit Investor;

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

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

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

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

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

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

14. Miscellaneous.

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

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

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

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

(e) Notices under the Loan Documents shall be effective in the case of utilization of the U.S. Mail Service, upon the earlier of (i) three days after deposit of such notice in the mail, return receipt requested or (ii) actual delivery. Notices sent by overnight courier services shall be effective one day after deposit with such service. All other notices shall be effective upon delivery. Notwithstanding the foregoing, any foreclosure notices shall be effective upon deposit with the U.S. Mail Service.

15. Limited Recourse. The terms of the Borrower Note govern recourse to Maker.

Executed effective as of the date set forth above.

LENDER:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

BORROWER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

EXHIBIT A

Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE UPDATED IF SURVEY CHANGES)

ATTACHMENT Q
TO LOAN AGREEMENT

ASSIGNMENT OF ENGINNER'S CONTRACT
AND CONSENT

ASSIGNMENT OF ENGINNER'S CONTRACT AND CONSENT

FOR VALUE RECEIVED, **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership (**"Owner"**), whose mailing address is: 2640 Fountain View Drive, Houston, Texas 77057, as additional security for the obligations incurred by **APV REDEVELOPMENT CORPORATION** a Texas non-profit corporation (**"Borrower"**), pursuant to that certain Loan Agreement (as heretofore amended, extended, modified or renewed, the **"City Loan Agreement"**), between the Borrower, Owner and **THE CITY OF HOUSTON** (**"City"**), whose mailing address is c/o Department of Housing and Community Development, 2100 Travis St, 9th Floor, Houston, TX 77002, Attention: Director, which City Loan Agreement evidences the loan made by City to Borrower in the original principal amount of $25,000,000.00 (**"City Loan"**), which is secured by among other collateral, a Fee Deed of Trust on the Project described below as well as the Collateral Assignment described below. The proceeds of City Loan were utilized by Borrower to make a $25,000,000.00 (**"Owner Loan"**) to Owner for the construction of the project located at 2100 Memorial Drive, Houston, Harris County, Texas 77007 (**"Project"**) and which Owner Loan and all documents executed in connection therewith including a Leasehold Deed of Trust on the Project were collaterally assigned to the City pursuant to a certain Collateral Assignment of Note and Liens (**"Collateral Assignment"**) executed by Borrower, hereby transfers, assigns and conveys to City, and the successors and assigns of City, all of the right, title and interest of Owner in and to that certain Engineer's contract (the **"Contract"**) by and between Borrower and _____(**"Contractor"**), a true and correct copy of the Contract having been deposited with and held by City. Upon the satisfaction in full of the obligations of Borrower to City evidenced by the City Loan Agreement and the Restrictive Covenants and other documents executed in connection therewith (**"City Loan Documents"**), this Assignment of Engineer's Contract and Consent (**"Assignment"**) shall become null and void.

Owner and Contractor, by executing the Consent to this Assignment which follows this Assignment, agree that City does not assume any of Owner's obligations or duties concerning the Contract, including, but not limited to, the obligation to pay for the preparation of the Contract, until and unless City shall exercise its rights, granted hereby, to the use of the Contract, and upon such exercise City shall become responsible for Owner's obligations thereunder.

Owner hereby irrevocably constitutes and appoints City as its attorney-in-fact to demand, receive and enforce Owner's rights with respect to the Contract, to give appropriate receipts, releases and satisfactions for and on behalf of Owner and to do any and all acts in the name of Owner or in the name of City with the same force and effect as Owner could do if this Assignment had not been made.

City shall not exercise any rights hereunder unless a Default shall have occurred and is then occurring, as such is defined in the City Loan Documents.

Unless a Senior Loan is to be utilized to fund a portion of the Project Improvements (as defined in the City Loan Agreement), Owner hereby represents and warrants to City that no previous assignment of its interest in the Contract has been made; and Owner agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Contract so long as this Assignment is in effect.

Capitalized terms not otherwise defined herein shall have the meaning specified in the City Loan Agreement.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Signature Page

Assignment of Engineer's Contract and Consent

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC,
a Texas limited liability company,
the sole general partner

By: APV Redevelopment Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

[CONTRACTOR'S CONSENT FOLLOWS]

CONSENT OF CONTRACTOR

The undersigned ("**Contractor**") represents to **THE CITY OF HOUSTON** ("**City**") that the Contract (as defined in that certain Assignment of Engineer's Contract and Consent ("**Assignment**") which immediately precedes this Consent of Contractor ("**Consent**") is the contract to be used in the actual engineering of the demolition of existing improvements on the Project; and Contractor hereby expressly consents to the above and foregoing Assignment and agrees that, in the event of any Default by Borrower or Owner under the City Loan Documents, City is authorized to use the Contract for the purpose of completing the Engineer's work on the Project contemplated by the City Loan Documents.

Contractor acknowledges that City is relying and is entitled to rely on Contractor's professional skill and competence in the provision of construction management services under the Contract.

To induce City to enter into the City Loan Documents with Borrower evidencing the City Loan, Contractor hereby agrees that all of the liens which Contractor may have or be entitled to either against such Contract or against the Project contemplated by the City Loan Documents (including the real property described in Exhibit A attached hereto and incorporated herein by reference) shall be and are hereby made subordinate and inferior to the Deeds of Trust and the liens and security interests securing the payment of the loan or loans to be made pursuant to the City Loan Documents.

DATED to be effective as of _____, 2021.

_____

By:_____
Name: _____
Title: _____

Exhibit List

Exhibit A - Legal Description

EXHIBIT A
Legal Description of the Land

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE UPDATED IF SURVEY CHANGES)

ATTACHMENT R
TO LOAN AGREEMENT

RECOGNITION, SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

When Recorded, Return to:

RECOGNITION, SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS RECOGNITION, SUBORDINATION NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of dated [_____], 2021 by and among the **CITY OF HOUSTON**, a Texas home rule municipality, having an office with an address at 2100 Travis Street, 9th Floor, Houston, Texas 77002 (the "City"), **WELLS FARGO BANK, N.A.**, a national banking association (the "Funding Lender") having an office with an address at _____, _____, a _____ ("**Fiscal Agent**") **VICTORY STREET PUBLIC FACILITY CORPORATION**, a nonprofit public facility corporation organized and existing under the laws of the State of Texas, having an office with an address at 2640 Fountain View Drive, Houston, Texas 77057 (together with its successors and/or assigns the "Governmental Lender"), **APV REDEVELOPMENT CORPORATION**, a Texas nonprofit corporation, having an office with an address at 2640 Fountain View Drive, Houston, Texas 77057 ("APV") together with the City, the Funding Lender, and Government Lender, the "Mortgagees" and each a "Mortgagee"), and **2100 MEMORIAL REDEVELOPMENT, LP**, a Texas limited partnership, having an office with an address at 2640 Fountain View Drive, Houston, Texas 77057 (the "Tenant"). All such parties, together with their respective permitted successors and assigns, are collectively referred to as the "Parties" and individually referred to as a "Party" to this Agreement.

RECITALS:

A. APV is the owner in fee simple of the real property more particularly described on Exhibit A hereto (the "Real Property").

B. Pursuant to that certain Ground Lease (the "Ground Lease"), dated as of the date hereof, between the APV and the Tenant, the APV ground leased the Real Property (the "Ground Leased Premises") to Tenant.

C. The Tenant intends to develop a certain project which will consist of a residential project containing one hundred ninety-seven (197) residential units (the "Project").

D. The Tenant applied to Governmental Lender for a loan ("Borrower Loan") for the construction, rehabilitation, development, equipping and/or operation of the Project.

E. The Borrower Loan is evidenced by that certain Promissory Note, Secured by Deed of Trust dated as of the Closing Date, in the aggregate maximum principal amount of $32,000,000.00

made by the Tenant as borrower payable to the order of Governmental Lender (the "Note") and that certain Credit Agreement, dated [_____], 2021, by and among the Tenant as borrower and Governmental Lender (the "Borrower Loan Agreement").

F. The Borrower Loan is secured by, among other things, that certain Construction Leasehold Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated [_____], 2021, executed by the Tenant for the benefit of Governmental Lender (as assigned, the "Borrower Loan Mortgage"), which Borrower Loan Mortgage encumbers the Tenant's leasehold estate under the Ground Lease and the fee estate which is the senior most deed of trust on the Project and Tenant's leasehold estate under the Ground Lease, pursuant to the terms of that certain Intercreditor, Subordination and Funding Agreement, dated [_____], 2021, by and among the City, the Governmental Lender, the Funding Lender, the Fiscal Agent, the Tenant, and APV (the "Intercreditor Agreement"). The Note, the Borrower Loan Mortgage, the Borrower Loan Agreement and all other documented executed in connection with the Borrower Loan, including this Agreement (the "Borrower Loan Documents") have been collaterally assigned to the Funding Lender and _____ as the fiscal agent.

G. The City provided a certain loan in the amount of $25,000,000.00 to APV (the "City Borrower Loan") which APV has loaned to the Tenant and which loan is secured by a certain Deed of Trust, Security Agreement and Financing Statement executed by APV against the Project ("City Fee Mortgage") and a certain Leasehold Deed of Trust, Security Agreement and Financing Statement executed by Tenant, dated as of the date hereof, encumbering the Tenant's interest in the Ground Lease (the "City Leasehold Mortgage" and collectively with the City Fee Mortgage, the "City Mortgage"), which City Leasehold Mortgage is being collaterally assigned by APV to the City as collateral for the loan it has made to APV, all as more particularly described in the Intercreditor Agreement and has the lien priority more particularly described in the Intercreditor Agreement.

H. Subject to satisfaction of certain requirements of APV, APV has agreed to lend to the Borrower the sum of $4,800,000.00 (the "Third Lien Loan" for the construction costs of the Project. The Third Lien Loan shall be secured by a Subordinate Leasehold Deed of Trust, Security Agreement --- Financing Statement ("Third Lien Deed of Trust") against the Tenant's interest in the Ground Lease.

I. In order to induce (i) the Funding Lender to provide the Funding Loan, (ii) the Governmental Lender to provide the Borrower Loan, (iii) the City to provide its financing to APV, (iv) APV to provide its financing to the Tenant, and (v) any future lender providing any permitted financing secured by the Ground Lease (all of the parties described in clauses (i) through (v) above, the "Beneficiary Parties") as well as to induce Tenant and APV to enter into the Ground Lease, the Parties hereto have entered into this Agreement.

AGREEMENT:

NOW THEREFORE, for and in consideration of the sum of $10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Recognition and Consent to Mortgages. The Parties hereto hereby consent and agree to the pledge and mortgage of the Tenant's interest in the Ground Lease and the APV's interest in the Real Property and the Ground Lease to the Government Lender, Funding Lender, City and APV, as may be applicable from time to time (collectively, the "Mortgages" and each a "Mortgage").

2. Nondisturbance.

(a) Each Mortgagee with a lien on the fee estate agrees, for itself and for its successors and assigns, that after the occurrence and continuance of default under its Mortgage if the applicable Mortgagee ("Foreclosing Mortgagee") elects only to foreclose APV's interest in the Real Property, the Ground Lease shall not be terminated or modified in any respect by virtue of such foreclosure, and the tenant leasehold portions of the Mortgages and all of the rights of the Tenant and the Beneficiary Parties or their successors or assigns, as applicable will be fully recognized by the Foreclosing Mortgagee as to the Tenant's leasehold estate, and shall not be disturbed, cancelled, terminated, or otherwise adversely affected by reason of such foreclosure, deed in lieu of foreclosure or similar action.

(b) If the Ground Lease has not been terminated, then, if a Foreclosure Purchaser (as defined below) takes title to the Ground Leased Premises: (i) Tenant shall recognize and attorn to successor landlord as tenant under the Ground Lease as affected by this Agreement as provided in paragraph 4 herein and (ii) the Ground Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Foreclosure Purchaser and Tenant.

3. Attornment.

(a) If any Mortgagee takes actual or constructive possession of the Ground Leased Premises or succeeds to the interest of APV under the Ground Lease, either as the result of appointment of a receiver, foreclosure of any Mortgage, action under an assignment of leases or acceptance of a deed to the Real Property in lieu of foreclosure, or otherwise, or in the event the Real Property shall be purchased at a foreclosure sale by a third party (each a Foreclosure Purchaser"), the Tenant and any of the Beneficiary Parties, or any of their designees or trustees, who succeed to the interest of the Tenant whether by foreclosure of any Leasehold Mortgage, assignment in lieu of foreclosure pursuant to the Leasehold Mortgage, action under an assignment of leases or if the Tenant's interest in the Lease is purchased at a foreclosure sale by a third party (each, a "Successor Tenant"), shall attorn to the such Foreclosure Purchaser and the Tenant or the Successor Tenant shall recognize the Foreclosure Purchaser, as the landlord under the Lease, and the Foreclosure Purchaser will recognize and accept the Tenant or the Successor Tenant as the tenant under the Ground Lease, and all of the rights and obligations of the parties thereunder shall continue in full force and effect as a direct lease between the applicable such Foreclosure Purchaser as though the interest of landlord had not terminated or such foreclosure proceedings had not been brought, and shall assume, perform and be bound by all of APV's obligations under the Ground Lease. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Foreclosure Purchaser, any instrument or certificate which, in the reasonable judgment of Foreclosure Purchaser, may be necessary or appropriate in any foreclosure proceeding or otherwise to evidence such attornment, provided that such instrument shall not in any way affect the material terms, conditions, rights, obligations, agreements or covenants of the parties under the Ground Lease.

(b) Upon the occurrence and continuance of an event of default under its Mortgage, if any Mortgagee elects to exercise its rights and remedies only as to Tenant's interest in the Ground Leased Premises and takes actual or constructive possession of the Ground Leased Premises or succeeds to the interest of the Tenant under the Ground Lease, either as the result of appointment of a receiver, foreclosure of any Mortgage, action under an assignment of leases or acceptance of an assignment of the Ground Lease in lieu of foreclosure, or otherwise, or in the event the interest of Tenant in the Ground Lease shall be purchased at a foreclosure sale by a third party (the "Leasehold Transferee"), then APV and the Mortgagees, as applicable, shall recognize the Leasehold Transferee as the tenant under the Ground Lease and the Leasehold Transferee shall attorn to APV and the Mortgagees and shall assume the obligations of Tenant for the period following such event. Such attornment shall be self-operative and effective without execution and delivery of any further instrument, immediately upon the transfer, and the Ground Lease shall continue in full force and effect as a direct lease between the Leasehold Transferee and APV.

4. Rights and Obligations of Foreclosure Purchaser under Ground Lease. Foreclosure Purchaser in the event of attornment shall have the same remedies in the event of any default by Tenant in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Ground Lease on Tenant's part to be performed that are available to APV under the Ground Lease; provided, however, that Foreclosure Purchaser shall not be:

(a) liable for any act or omission of or any claims against prior landlord (including APV); or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including APV); or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including APV); or

(d) bound by any amendment or modification of the Ground Lease, or waiver of any of its terms, made without the Foreclosing Mortgagee's consent; or

(e) liable for any sum that any prior landlord (including APV) owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Foreclosure Purchaser; or

(f) bound by any surrender, cancellation, or termination of the Ground Lease, in whole or in part, agreed upon between APV and Tenant to which the Foreclosing Mortgagee has not already agreed; or

(g) liable for any construction obligation of any prior landlord (including APV); or

(h) liable for any breach of representation or warranty of any prior landlord (including APV).

5. Ground Lease Amendments, Surrender. Neither the Tenant nor any Successor Tenant nor APV will surrender the Ground Leased Premises or consent to the modification or amendment of any of the terms of the Ground Lease, or consent to the termination of the Ground Lease without prior notice to and prior consent of each Mortgagee, and if any such actions is proposed or sought by the Tenant or a Successor Tenant as a result of the APV's default under the Ground Lease, the Tenant or the Successor Tenant, as applicable, shall provide the Mortgagees the concurrent opportunity to cure such default as specified below.

6. Mortgagees' Right to Cure a APV Default. Notwithstanding anything to the contrary in the Ground Lease, neither the Tenant nor any Successor Tenant will terminate or seek to terminate the Ground Lease by reason of any act or omission of APV, or any other default under the Ground Lease, or exercise any right under the Lease to make deductions from or reductions in payments of rent under the Ground Lease, until the Tenant or a Successor Tenant shall have given written notice of such act, omission, or other default to each Mortgagee as hereinafter provided (the "Default Notice"). If the act, omission, or other default cannot with due diligence be remedied by any Mortgagee within the period prescribed in the Ground Lease, then the Mortgagees shall have a reasonable time in which to remedy such default provided any Mortgagee promptly commences and thereafter proceeds with due diligence to complete the remedy of such default. In addition, as to any breach or default by APV the cure of which requires a Mortgagee to possess and control the Real Property, provided a Mortgagee undertakes to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph or as is otherwise set forth in the Ground Lease, Mortgagees' cure period shall continue for such additional time as such Mortgagee that has commenced the cure may reasonably require to obtain possession and control of the Real Property and thereafter to cure the breach or default with reasonable diligence and continuity. In no case shall the cure time allowed be less than 90 days.

7. Mortgagee's Right to Cure a Tenant Default.

(a) In the event of the occurrence of an Event of Default (as defined under the Ground Lease) by Tenant under the Ground Lease, APV shall so notify, in writing, Tenant and all Mortgagees of such Event of Default. Each Mortgagee shall have all of the rights set forth in the Section 15.2.1 of the Ground Lease including the right to cure any such default for a period of no less than ninety (90) days or such greater period as therein provided and Mortgagees' cure period shall continue for such additional time as such Mortgagee may reasonably require to obtain possession and control of the Real Property and thereafter to cure the breach or default with reasonable diligence and continuity.

(b) Upon foreclosure or assignment in lieu of foreclosure of the Tenant's interest in the Ground Lease, the Foreclosing Mortgagee shall have the right to acquire the Tenant's interest in the Ground Lease in its own name or the name of a nominee (or to enter into a new Ground Lease in its own name with APV) and shall also have the right to further assign the Ground Lease interest to a third party, subject to the terms of the Ground Lease.

(c) If the Ground Lease terminates because of an Event of Default of Tenant or because Tenant rejects it in bankruptcy or similar proceedings, then APV shall upon request will enter into a new Ground Lease with the most senior Beneficiary Party who desires to enter into the Ground Lease on the same terms and with the same priority as the Ground Lease.

8. Copies of Notices to APV, Assignment or Subletting. From and after the date hereof, the Tenant and any Successor Tenant shall send to the Mortgagees (in the manner provided herein) a copy of any notice or statement sent to APV by the Tenant or any Successor Tenant asserting a default under the Ground Lease or seeking to assign the Ground Lease or sublet any portion of the Ground Leased Premises, other than pursuant to residential leases of apartments in the ordinary course of business. Such copy shall be sent to the Mortgagees at the same time such notice or statement is sent to APV at the address set forth in the preamble.

9. Successors and Assigns. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Parties hereto acknowledge and agree that the provisions set forth in this Agreement are, and are intended to be, an inducement and consideration to each Beneficiary Party to make, or to permit to remain outstanding, loans, advances and financial accommodations to the Tenant, and each Beneficiary Party shall be deemed conclusively to have relied upon such provisions in making, or permitting to remain outstanding, such loans, advances and financial accommodations, and each Beneficiary Party is made an obligee hereunder and may be directly enforce the provisions hereof.

10. Notices. Except as otherwise provided herein, all notices, demands, requests, and other communications required or permitted hereunder shall be given in writing and sent by (i) personal delivery, or (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) facsimile (provided that such facsimile is confirmed by expedited delivery service or by United States mail in the manner previously described), addressed to the addressee at such party's address set forth by its signature below, or to such other address as such party may specify by written notice, sent in accordance with this paragraph at least thirty (30) days prior to the date of the giving of such notice. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery, or in the case of mail, as of the date of deposit in an official depository of the United States mail, or in the case of either delivery service, or facsimile, upon receipt. To the extent actual receipt is required, rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was received shall be deemed to be receipt of the notice, demand, request, or other communication sent.

SIGNATURE PAGE FOR

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal as of the date and year countersigned by the City's Controller.

APV REDEVELOPMENCORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of **APV REDEVELOPMENT CORPORATION**, a Texas non-profit corporation on behalf of such corporation.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

SIGNATURE PAGE FOR
RECOGNITION, SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company, the sole general partner

By: APV Redevelopment Corporation, a Texas non-profit corporation, its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation and sole member of 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company and sole general partner of **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership, on behalf of such corporation, limited liability company and limited partnership.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

SIGNATURE PAGE FOR
RECOGNITION, SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

WELLS FARGO BANK, N.A.

By:_____
Name:_____
Title:_____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____ ___, 2021, by _____, the _____of **WELLS FARGO BANK, N.A.**, a national banking association, on behalf of said association.

_____
Notary Public in and for the State of Texas

_____
Printed Name of Notary
My commission expires:_____.

SIGNATURE PAGE FOR
RECOGNITION, SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

VICTORY STREET PUBLIC FACILITY CORPORATION,
a Texas public nonprofit corporation

By:_____
Name: _____
Title:_____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____ ___, 2021, by, _____, the _____of **VICTORY STREET PUBLIC FACILITY CORPORATION**, a Texas public nonprofit corporation, on behalf of said association.

_____
Notary Public in and for the State of Texas

_____
Printed Name of Notary
My commission expires:_____.

SIGNATURE PAGE FOR
RECOGNITION, SUBORDINATION, NONDISTURBANCE AND
ATTORNMENT AGREEMENT

CITY OF HOUSTON, TEXAS

Pat Jefferson Daniel,
Interim City Secretary

Sylvester Turner, Mayor

APPROVED:

COUNTERSIGNED:

Tom McCasland, Director
Housing and Community Development
Department

Chris B. Brown, City Controller

APPROVED AS TO FORM:

COUNTERSIGNATURE DATE:

Senior Assistant City Attorney
LD#_____

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by _____ for Sylvester Turner, Mayor of the **CITY OF HOUSTON**, a municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My commission expires: _____

(Fiscal Agent)

_____
By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by _____, the _____ of _____, a _____ on behalf of such _____.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

EXHIBIT A
LEGAL DESCRIPTION

Being a tract or parcel containing 1.561 acres (68.009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE ADJUSTED IF SURVEY CHANGES)

ATTACHMENT S
TO LOAN AGREEMENT

DECLARATION OF SUBORDINATION

DECLARATION OF SUBORDINATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This **Declaration of Subordination** is entered into effective as of _____, 2021 (the "**Effective Date**"), among **APV Redevelopment Corporation**, a Texas nonprofit corporation (the "**Owner**"), **City of Houston**, a Texas home rule municipality (the "**City**"), **2100 Memorial Redevelopment, LP**, a Texas limited partnership (the "**Borrower**") and **[Columbia Affiliate]** ("**Columbia**"). All such parties, together with their respective permitted successors and assigns, are collectively referred to as the "**Parties**" and individually referred to as a "**Party**" to this Agreement.

A. The Borrower proposes to develop the real property (the "**Property**") more particularly described in Exhibit A attached hereto, that includes the acquisition, design, development, construction and operation of 197-unit multifamily residential project located in the City of Houston, Harris County, Texas, known or to be known as 2100 Memorial Apartments (the "**Project**"); and wherein the Borrower will enter into a ground lease ("**Ground Lease**") with Owner covering the Property.

B. Borrower has arranged for initial Project financing from the City to the Owner (who will loan the City funds to the Borrower), Columbia, and low income housing tax credit equity from the Texas Department of Housing & Community Affairs to develop and operate the Project.

C. Subject to satisfaction of certain requirements of the City, the City has agreed to lend to Owner the sum of $25,000,000.00 (the "**City Loan**") which shall be secured initially by a first lien Deed of Trust, Security Agreement and Financing Statement ("**City Deed of Trust**") against the Property and Project. The City Loan will be loaned to Owner which will lend the proceeds of the City Loan to the Borrower ("**City Subloan**", and together with the City Loan, collectively, the "**First Lien Loans**") for the acquisition and construction costs of the Project, as provided in the City Loan Documents (as hereinafter defined). The City Subloan shall be secured by a Leasehold Deed of Trust, Security Agreement and Financing Statement against the Ground Lease ("**City Subloan Deed of Trust**" and collectively with the City Deed of Trust, the "**First Lien Deeds of Trust**") which City Subloan, the City Subloan Deed of Trust and related

loan documents shall be collateral assigned to the City as additional collateral for the City Loan. (All documents executed in connection with or securing the First Lien Loans are collectively referred to herein as the "**First Lien Loan Documents**").

D. Subject to satisfaction of certain requirements of Columbia, Columbia has agreed to lend to the Borrower the sum of up to $32,000,000.00 (the "**Second Lien Loan**") for the construction costs of the Project. The Second Lien Loan shall be secured by a Deed of Trust, Security Agreement - Financing Statement against the Ground Lease and Property ("**Second Lien Deed of Trust**"). (The documents and agreements evidencing, securing or relating to the Second Lien Loan are collectively referred to as the "**Second Lien Loan Documents**".) By virtue of this Agreement, the Second Lien Loan and the Second Lien Loan Documents, are specifically made subordinate to the First Lien Loans and the First Lien Loan Documents.

F. The Property, Project, and Ground Lease (collectively, the "Property Interests") are encumbered (or will be encumbered) by those certain Restrictive Covenants executed (or to be executed) by Owner for the benefit of the City (together with all renewals, modifications, consolidations, replacements and extensions thereof, collectively, the "LURA") and all of the loans and liens herein described shall be subordinated to the LURA.

NOW, THEREFORE, for and in consideration of the City's extension of credit to Owner and Borrower evidenced by the First Lien Loans, and in satisfaction of certain requirements set forth in that certain Loan Agreement between the City, Borrower and Owner, effective as of _____, 2021 (the "Loan Agreement") and for and in consideration of the mutual promises, covenants and agreements contained herein, the parties hereto hereby agree, covenant, represent and warrant for the benefit of the City and its successors and assigns as follows:

I. The First Lien Loan Documents, the First Lien Deeds of Trust, the Second Lien Loan Documents and the Second Lien Deed of Trust t are now and shall at all times during the "Affordability Period" (as defined in the LURA) be subject, subordinate and inferior to the lien, operation and effect of the LURA with the same effect as if the LURA had been executed, delivered and recorded prior to the execution, delivery and recordation of the

First Lien Loan Documents, the First Lien Deeds of Trust, Second Lien Loan Documents, and the Second Lien Deed Trust (collectively, "Project Loan Documents"), regardless of the order of recordation of: (i) the Project Loan Documents and (ii) the LURA.

II. So long as the Affordability Period has not expired, the LURA shall at all times be an exception and encumbrance to title of the Property Interests delivered to any holder of a Deed of Trust or other lien against any of the Property Interests or any part thereof.

III. (i) In no event shall the LURA be deemed a "First Lien Loan Document", (ii) during the Affordability Period, the LURA shall at all times be prior and superior to all liens on the Property Interests and (iii) in the event that there is a conflict in the terms and provisions of (a) this Declaration, (b) the First Lien Loan Documents, and/or (c) the Second Lien Loan Documents, the terms and provisions of this Declaration shall control.

IV. The parties hereto stipulate and agree that the Second Lien Loan Documents including, without limitation, the Second Lien Deed of Trust are now and shall at all times be subject, subordinate and inferior to the lien of the First Lien Loan Documents including, without limitation, the First Lien Deed of Trust, with the same effect as if the First Lien Loan Documents including, without limitation, the First Lien Deed of Trust had been executed, delivered and recorded prior to the execution, delivery and recordation of the Second Lien Loan Documents including, without limitation, the Second Lien Deed Trust (regardless of the order of recordation of: (i) First Lien Loan Documents including, without limitation, the First Lien Deed of Trust and (ii) the Second Lien Loan Documents including, without limitation, the Second Lien Deed Trust.

The priority between the various loans and liens shall be as follows, regardless of the frequency or manner of renewal, extension, change or alteration thereof:

(i) First Priority: First Lien Loan and the First Lien Loan Documents;

(ii) Second Priority: Second Lien Loan and the Second Lien Loan Documents; and

(iii) It is anticipated that Wells Fargo Bank, N.A., a national banking association ("Senior Lender"), will make a $32,000,000 loan ("Senior Lien Loan") to the Borrower which shall be secured by a first lien deed of trust ("Senior Lien Deed of Trust") on the Property Interests at the

Closing of Tranche 2 of the First Lien Loan. At such time, the Second Lien Loan and Second Lien Loan Documents shall be assigned to Senior Lender and the Second Lien Loan and Second Lien Loan Documents shall be amended and restated as part of the documents evidencing and securing the Senior Lien Loan ("Senior Lien Loan Documents"). Upon the Closing of the Senior Loan in the amount specified above or such other amount agreed to by the parties hereto, the City shall subordinate the First Lien Loan and the First Lien Loan Documents, to the Senior Lien Loan and Senior Lien Loan Documents, and the relative priority of the parties shall be as follows :

(i) First Priority: Senior Lien Loan and the Senior Lien Loan Documents; and

(ii) Second Priority: First Lien Loans and the First Lien Loan Documents..

Notwithstanding the foregoing, all of the loans, loan documents and liens herein described shall remain inferior and subordinate to the LURA and the Senior Lien Loan, Senior Lien Deed of Trust and the Senior Lien Loan Documents must be specifically subordinated to the LURA as a condition to the subordination of the First Lien Loan and First Lien Loan Documents to the Senior Loan and Senior Lien Loan Documents.

VII. All notices, demands, certificates, or other communications hereunder shall be in writing and shall be deemed sufficiently given or served for all purposes when delivered personally, when sent by certified or registered mail, postage prepaid, return receipt requested or by private courier service, in each case, with the proper address as indicated below; provided that any such notices, demands, certificates, or other communications shall be deemed effective only upon receipt. Each party may, by written notice given to the other parties, designate any other address or addresses to which notices, certificates or other communications to them shall be sent as contemplated by this Declaration. Until otherwise so provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

OWNER:

APV Redevelopment Corporation
2640 Fountain View Drive
Houston, Texas 77057
Attention: Mark Thiele

Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry J. Palmer

BORROWER:

2100 MEMORIAL REDEVELOPMENT, LP
2640 Fountain View Drive
Houston, Texas 77057
Attention: Mark Thiele

Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry J. Palmer

COLUMBIA:

_____

_____

_____

CITY:

CITY OF HOUSTON
c/o Department of Housing and Community Development
2100 Travis St, 9th Floor
Houston, TX 77002
Attention: Director

With copy to:

CITY OF HOUSTON LEGAL DEPARTMENT
900 Bagby, 4th Floor
Houston, TX 77002
Attention: City Attorney

VIII. Whenever in this Declaration any party hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all rights, benefits, covenants, promises, and agreements in this Declaration by or on behalf of the respective parties hereto shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

IX. This Declaration shall be performable and enforced in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws rules of the State of Texas. Venue shall be appropriate in Harris County, as applicable.

X. No amendment or waiver of any provision of this Declaration shall be effective unless the same shall be (a) in writing and signed by the party or parties against whom it is to be enforced and (b) approved in writing by the Mayor of the City of Houston and countersigned by the Controller of the City, and any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. The obligations set forth herein constitute covenants running with the Property and shall be binding upon Senior Lender, its successors and assigns.

XI. Notwithstanding anything contained herein to the contrary, neither this Declaration, nor the City's acceptance hereof, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for the approval or issuance of future agreements, permits or licenses by the City.

XII. In case any one or more of the provisions contained in this Declaration shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected and/or impaired thereby.

XIII. Any provision of this Declaration which contemplates (i) the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Effective Date of this Declaration in connection with this Declaration (and the transactions contemplated herein), or (ii) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Councils to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

XIV. The parties have executed this Declaration in multiple originals, each having full force and effect, as of the date of this Declaration. Facsimile or electronically transmitted signatures shall be deemed originals for all purposes hereunder.

XV. This Declaration shall remain in full force and effect until payment in full of the Senior Loan (including any refinancing thereof).

[SIGNATURE PAGES FOLLOW]

SIGNATURE PAGE

DECLARATION OF SUBORDINATION

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written.

BORROWER:

2100 MEMORIAL REDEVELOPMENT, LP,
a Texas limited partnership

By: 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company, the sole general partner

By: APV Redevelopment Corporation, a Texas non-profit corporation, its sole member

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of APV Redevelopment Corporation, a Texas non-profit corporation and sole member of 2100 Memorial Redevelopment GP, LLC, a Texas limited liability company and sole general partner of **2100 MEMORIAL REDEVELOPMENT, LP,** a Texas limited partnership, on behalf of such corporation, company, and limited partnership.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

SIGNATURE PAGE

DECLARATION OF SUBORDINATION

OWNER:

APV REDEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Name: Mark Thiele
Title: Secretary/Treasurer

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by Mark Thiele, the Secretary/Treasurer of **APV REDEVELOPMENT CORPORATION**, a Texas nonprofit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

_____
Printed Name of Notary
My commission expires:____.

SIGNATURE PAGE

DECLARATION OF SUBORDINATION

CITY:

CITY OF HOUSTON, TEXAS

Pat Jefferson Daniel,
Interim City Secretary

Sylvester Turner, Mayor

APPROVED:

Tom McCasland, Director
Housing and Community Development
Department

COUNTERSIGNED:

Chris B. Brown, City Controller

APPROVED AS TO FORM:

Senior Assistant City Attorney
LD#_____

COUNTERSIGNATURE DATE:

STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing instrument was acknowledged before me on the ____ day of _____, 2021, by _____ for Sylvester Turner, Mayor of the CITY OF HOUSTON, a municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed Name of Notary
My commission expires: _____

SIGNATURE PAGE

DECLARATION OF SUBORDINATION

COLUMBIA:

_____

By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ___ day of _____, 2021, by _____, the _____ of _____, a _____ on behalf of such _____.

_____
NOTARY PUBLIC, State of Texas

_____
PRINTED NAME OF NOTARY
My COMMISSION EXPIRES:_____

EXHIBIT A

Being a tract or parcel containing 1.561 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas, being all of called 1.561 acre tract conveyed to The Housing Authority of the City of Houston, as recorded under Harris County Clerk's File Number V449978, said 1.561 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas State Plane Coordinate System, South Central Zone Number 4204 (NAD83)):

BEGINNING at 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the intersection of the South right-of-way line of N. Memorial Way (F.K.A. West Capitol Street) (width varies) with the West right-of-way line of Hemphill Street (50' wide), being in the East line of a called 0.4555 acre tract (TRACT 2) as conveyed to 602 Sawyer/MH, LLC, as recorded under Harris County Clerk's File Number 20150211189 and being the Northwest corner of said called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 70°35'39" West, 1.27 feet;

THENCE along the South right-of-way line of said N. Memorial Way the following three (3) courses:

North 87°41'46" East, a distance of 264.52 feet to an "X" in concrete set marking an angle point of said called 1.5613 acre tract and of the herein described tract;

South 88°04'03" East, a distance of 135.37 feet to an "X" in concrete found marking an angle point of said called 1.5613 acre tract and of the herein described tract;

North 87°41'46" East, a distance of 107.20 feet to a 5/8-inch iron rod found marking the Northeast corner of said called 1.5613 acre tract and of herein described tract;

THENCE South 02°18'14" East, departing the South right-of-way line of the aforesaid N. Memorial Way and along the East line of said called 1.5613 acre tract, a distance of 71.86 feet to a 5/8-inch iron rod found in the Northerly right-of-way line of Memorial Drive (width varies), being a point on the arc of a curve to left, and being the Southeast corner of said called 1.5613 acre tract and of the herein described tract;

THENCE along the Northerly right-of-way line of said Memorial Drive the following two (2) courses:

351.81 feet along the arc of said curve to the left, having a radius of 2350.51 feet, a central angle of 08°34'32", and a chord which bears South 72°58'56" West, 351.48 feet to a 5/8-inch iron rod found marking a point of reverse curvature, from which a found 1/2" iron pipe bears South 84°43'37" West, 2.25 feet;

179.26 feet along the arc of a curve to the right, having a radius of 165.00 feet, a central angle of 62°14'51", and a chord which bears North 80°10'54" West, 170.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the South corner of the aforesaid TRACT 2 and being the Southwest corner of the aforesaid called 1.5613 acre tract and of the herein described tract, from which a found 5/8-inch iron rod bears North 80°46'48" West, 1.89 feet;

THENCE North 02°18'14" West, along the East line of said TRACT 2 and the West line of said 1.5613 acre tract, a distance of 135.31 feet to the **POINT OF BEGINNING** and containing 1.561 acres (68,009 square feet) of land, more or less.

(TO BE ADJUSTED ACCORDING TO FINAL SURVEY)