



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of June 16, 2012**

**DATE:** May 21, 2012

**SUBJECT:** Appropriation of Community Development Block Grant (CDBG) program income funds from the AHC Multifamily Revolving Loan Fund; allocation of CDBG funds to loan to an AHC, Inc. (AHC) County-approved ownership affiliate to finance the acquisition of real property and the demolition of the Shell Gas Station for the purpose of developing a new affordable housing complex at Columbia Pike and S. Greenbrier Street; approval of the CDBG Subrecipient and Loan Agreement; and authorization for the County Manager to execute the required CDBG loan documents for a loan of CDBG funds to an AHC County-approved ownership affiliate.

### C. M. RECOMMENDATIONS:

1. Appropriate \$3,078,034 in FY 2012 in Community Development Block Grant program income funds from the AHC Multifamily Revolving Loan Fund (206.371890) to the Community Development Fund for the County's Multifamily Revolving Loan Fund (206.72405).
2. Allocate up to \$3,078,034 in Community Development Block Grant program income funds from the Unallocated Multifamily Revolving Loan Fund (206.456300.72405.MFRL.0668.68DA) to AHC, Inc.'s ownership affiliate (206.456300.72405.MFRL.0668.6HSH) for the following authorized federal CDBG-eligible activities: (a) the acquisition of 5511 Columbia Pike (RPC # 22011056) and a portion of the real property located at 860 South Greenbrier Street (RPC #22011054), (b) the payment of certain eligible acquisition-related soft costs, (c) the payment of certain eligible predevelopment costs, and (d) the payment of costs associated with the demolition of the Columbia Pike Food Mart and Shell Gas Station, in order to facilitate the construction of an 83-unit affordable housing complex by AHC, Inc.'s designated County-approved ownership affiliate. The CDBG loan funds will be subject to the terms and conditions approved in the board report from agenda item #29 of March 10, 2012 County Board meeting and this board report.
3. Approve the attached Community Development Block Grant Subrecipient and Loan Agreement for the up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23, the

County Manager:

County Attorney:

Staff: Sarah Pizzo, CPHD

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County-approved ownership affiliate of AHC, Inc., solely for the use on authorized CDBG-eligible activities.

4. Authorize the County Manager to execute, on behalf of the County Board, the CDBG loan documents for the up to \$3,078,034 CDBG loan to AHC Limited Partnership - 23 including the (i) Community Development Block Grant Subrecipient and Loan Agreement, (ii) CDBG Promissory Note, (iii) CDBG Deed of Trust, Assignment of Rents and Leases and Security Agreement, and (iv) Declaration of Restrictive Covenants, Conditions and Restrictions, and all related documents, subject to approval by the County Attorney, and authorize and direct the trustees for the County Board to execute the CDBG Deed of Trust, Assignment of Rents and Leases and Security Agreement, and all related documents, subject to approval by the County Attorney.
5. Authorize the County Manager, with the concurrence of the County Attorney, to act as the County Board's representative in approving revisions to the CDBG loan documents for the up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23 that are necessary to remove any ambiguity or inconsistency or which improve the County's financial security or financial position, and which changes do not adversely affect the County financially, prior to or after execution of the CDBG loan documents for the up to \$3,078,034 CDBG loan to AHC Limited Partnership - 23.

**ISSUES:** County Board approval will facilitate the acquisition of the real property needed to develop and construct The Shell apartments. No new funds are being requested. There are no outstanding issues.

**SUMMARY:** This is a follow-up to agenda item #29 at the March 10, 2012 County Board meeting in which the County Board, among other things, authorized use of up to \$3,078,034 from the AHC Multifamily Revolving Loan Fund for acquisition of property and other CDBG-eligible activities for The Shell, a proposed 83-unit affordable complex to be developed at Columbia Pike and S. Greenbrier Street. All funds currently in the AHC Multifamily Revolving Loan Fund must be remitted to the County before disbursement for eligible costs related to The Shell. As a result, the funds must be appropriated and allocated for The Shell. No new funds are being requested.

The County Manager is requesting and recommending that the County Board (i) appropriate and allocate the CDBG program income funds for use as a CDBG loan to AHC Limited Partnership - 23, an ownership affiliate of AHC; (ii) approve the CDBG Subrecipient and Loan Agreement for the up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23, in substantially the form attached as Exhibit A to this board report; and (iii) authorize the County Manager to execute the CDBG loan documents, and all related documents, required for the up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23, subject to approval by the County Attorney, and authorize the County trustees to execute the CDBG Deed of Trust, Assignment of Rents and Leases and Security Agreement, and all related documents, subject to approval by the County Attorney.

**BACKGROUND:** AHC is planning to construct an 83-unit affordable rental complex, The Shell, at Columbia Pike and S. Greenbrier Street on the site of the current Columbia Pike Shell Station and a portion of its Harvey Hall Apartments' parking lot and undeveloped land. AHC has

owned and operated the adjacent 116-unit Harvey Hall affordable housing complex since 1994 and recognized an opportunity to develop on the underutilized Harvey Hall land. In order to create a sufficient size development site, AHC determined that acquisition of the adjacent Columbia Pike Shell Station was necessary.

At the March 10, 2012 County Board meeting, the County Board took several actions related to The Shell including authorizing the use of up to \$3,078,034 in CDBG Loan Funds from the AHC Multifamily Revolving Loan Fund for federal CDBG-eligible activities; allocating up to \$3,750,000 in FY 2012 AHIF funds to AHC for project costs that are ineligible to receive CDBG Loan Funds; and authorizing the County Manager and County Attorney to negotiate the required documents for the CDBG and AHIF loans which are not to exceed \$6,000,000 in total.

The AHC Multifamily Revolving Loan Fund was established as part of the County's policy on CDBG program income when, on February 21, 1981, the County Board designated AHC's housing development program as a "revolving fund" program. The Board established that any income received from AHC's County CDBG funded housing development programs would be placed into the AHC Multifamily Revolving Loan Fund instead of returned directly to the County and, upon application to and authorization by the County, would be made available to AHC or any other eligible nonprofit housing developer to be utilized for the acquisition or rehabilitation of affordable multifamily rental projects.

All funds in the AHC Multifamily Revolving Loan Fund will now be remitted to the County and the County will administer and disburse the funds for the CDBG-eligible activities. As a result of the funds being remitted to the County, the County Manager is requesting that the County Board appropriate and then allocate those funds for this project. The County Manager is also requesting approval of the CDBG Subrecipient and Loan Agreement and authorization to execute the required CDBG loan documents, and all related documents, subject to approval by the County Attorney. The County Manager additionally requests to authorize and direct the trustees for the County Board to execute the CDBG Deed of Trust, Assignment of Rents and Leases and Security Agreement, and all related documents, subject to approval by the County Attorney.

**DISCUSSION:** The Board report for agenda item #29 of the March 10, 2012 County Board meeting provides the project and affordable housing program details, which the County Board approved, for the development of The Shell. Following the March 10, 2012 County Board meeting, AHC applied for 9% competitive Low Income Housing Tax Credits from the Virginia Housing Development Authority (VHDA). On June 6, 2012, VHDA announced that AHC had received a tax credit award to help finance the development of The Shell. AHC plans to acquire the Columbia Pike Shell Station in July and to acquire later this summer the portion of the Harvey Hall property needed for the redevelopment area, which is currently owned by Harvey Hall's tax credit partnership.

The proposed CDBG Subrecipient and Loan Agreement is attached to this Board report as Exhibit A. Some of the pertinent provisions in the CDBG Subrecipient and Loan Agreement are as follows:

- AHC will be required to transfer all County CDBG funds and program income in its housing development revolving fund to the County prior to the disbursement of County CDBG loan funds.
- The up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23 will accrue interest at the below market rate of two and six-tenths percent (2.6%) per annum accruing immediately upon execution of the CDBG Subrecipient and Loan Agreement and compounded annually.
- The term for the up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23 will be sixty (60) months and the up to \$3,078,034 CDBG loan will be required to be repaid in full sixty (60) months from the date the CDBG Subrecipient and Loan Agreement is executed. If, however, AHC secures financing for the development and construction of The Shell and executes an amended and restated CDBG Subrecipient and Loan Agreement (subject to County Board approval), the term for the up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23 will be extended to thirty-five (35) years (subject to County Board approval).
- The up to \$3,078,034 CDBG loan to AHC Limited Partnership – 23 will be secured by a deed of trust on the real property located at 5511 Columbia Pike (RPC # 22011056) and a portion of the real property located at 860 South Greenbrier Street (RPC #22011054).
- Once AHC Limited Partnership – 23 acquires real properties using the CDBG funds, it will be prohibited from selling, assigning, or transferring any of its interest in the real properties without the prior consent of the County Board.
- AHC Limited Partnership – 23 represents and warrants that to the best of its knowledge, no Hazardous Substances have been or are being generated, stored, released or disposed of on, under or from the real properties being purchased, except for certain hazardous substances as previously disclosed to the County’s Director of Housing Division and Housing Development Coordinators in written environmental reports delivered to the County’s Director of Housing Division and Housing Development Coordinators, as to all of which Hazardous Substances AHC Limited Partnership – 23 shall work with the Shell site seller to undertake and complete all necessary and appropriate response actions (including without limitation removal, encapsulation and/or remediation) in accordance with all applicable legal requirements in order to achieve a level of no significant risk to human health, public welfare or the environment, prior to completion of The Shell site project and occupancy of any units therein.

**FISCAL IMPACT:** The current County Multifamily Revolving Loan Fund balance is \$652,037. Approval of the County Manager recommendation to appropriate \$3,078,034 in funds from the AHC Multifamily Revolving Loan Fund will result in a balance of \$3,730,071. Approval of the County Manager recommendation to allocate up to \$3,078,034 will result in a remaining fund balance of \$652,037. Staff will seek County Board approval at a future meeting to de-obligate any CDBG funds not used by this project, which would increase the fund balance.

## Exhibit A

CDBG Subrecipient and Loan Agreement between the County Board and AHC Limited Partnership - 23

County Manager:



County Attorney:



Staff: Sarah Pizzo, CPHD

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**ARLINGTON COUNTY, VIRGINIA  
COMMUNITY DEVELOPMENT BLOCK GRANT  
SUBRECIPIENT AND LOAN AGREEMENT  
THE SHELL SITE PROJECT**

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This **COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AND LOAN AGREEMENT** (this “**Agreement**”) is entered into as of this \_\_\_ day of June, 2012 (the “**Effective Date**”) by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic (the “**County Board**”), acting through its County Manager, its Director of Housing Division and its Housing Development Coordinator (the “**County Staff**”) and **AHC LIMITED PARTNERSHIP - 23**, a Virginia limited partnership (the “**Borrower**”) (the County Board and the Borrower each a “**Party**” and collectively the “**Parties**”).

**RECITALS**

**WHEREAS**, the County Board has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (the “**HCD Act**”), Public Law 93-383; and

**WHEREAS**, The Shell Housing Corporation, a Virginia non-stock corporation, as the Borrower’s general partner, and AHC, Inc., a Virginia non-stock corporation (“**AHC**”), as the Borrower’s limited partner, formed and organized the Borrower as a Virginia limited liability partnership for the sole purpose of (a) acquiring and owning certain real property located at 5511 Columbia Pike – RPC Number 22011056 (the “**Shell Site Property**”), as more particularly described in **Exhibit A**, and certain real property located at 860 South Greenbrier Street – RPC Number 22011054 (the “**Harvey Hall Property**” and together with the Shell Site Property, the “**Required Project Property**”) and (b) developing, financing, constructing, maintaining, operating and owning an 83-unit affordable housing apartment complex on the Required Project Property (“**The Shell Site Project**”) ; and

**WHEREAS**, on March 13, 2012, the Borrower and NOVA Petroleum Realty, LLC, a Delaware limited liability company (the “**Shell Site Seller**”), executed an Agreement of Purchase and Sale pursuant to which the Shell Site Seller agreed to sell, grant and convey, and the Borrower agreed to purchase, receive and pay \$1,900,000 for the Shell Site Property; and

**WHEREAS**, on March 14, 2012, the Borrower and AHC Limited Partnership - 6, a Virginia limited partnership (the “**Harvey Hall Site Seller**”), executed an Agreement of Purchase and Sale pursuant to which the Harvey Hall Site Seller agreed to sell, grant and convey, and the Borrower agreed to purchase, receive and pay \$200,000 for the Harvey Hall Property; and

**WHEREAS**, on June     , 2012, the County Board authorized the allocation of up to \$3,078,034 in federal Community Development Block Grant (“**CDBG**”) loan funds

to AHC, or its designated County Board-approved ownership affiliate, for restricted use on the following authorized federal CDBG-eligible activities: (a) the acquisition of the Required Project Property, (b) the payment of certain eligible acquisition-related soft costs, (c) the payment of certain eligible predevelopment costs, and (d) the demolition of the Columbia Pike Food Market and Shell Gas Station located on the Shell Site Property (“**CDBG-Eligible Project Activities**”), as further described in the Use of Federal CDBG Loan Funds chart attached hereto as **Exhibit C**; and

**WHEREAS**, the Borrower’s projected total costs for the CDBG-Eligible Project Activities is \$                     ; and

**WHEREAS**, in order to facilitate payment of the CDBG-Eligible Project Activities, pursuant to the terms of this Agreement, the County Board has agreed to provide to the Borrower, and the Borrower has agreed to accept from the County Board, a CDBG loan in an amount of up to \$3,078,034 (the “**Federal CDBG Loan**”), subject to the terms of this Agreement and the other CDBG Loan Documents (as defined below), including without limitations the restrictions and covenants upon the use and transfer of the Required Project Property; and

**WHEREAS**, the Federal CDBG Loan is evidenced by a CDBG Promissory Note, which is payable to the order of the County Board and is dated as of the Effective Date (the “**CDBG Promissory Note**”), substantially in the form attached hereto as **Exhibit D**, and the obligations of the Borrower under this Agreement and the CDBG Promissory Note, and each and every other documents delivered to the County Board by or on behalf of the Borrower with respect to the Federal CDBG Loan, are secured by a CDBG Deed of Trust, Assignment of Rents and Leases and Security Agreement (the “**CDBG Deed of Trust**”), substantially in the form attached hereto as **Exhibit E**, conveying the Borrower’s interest in the Required Project Property as security for the Federal CDBG Loan; and

**WHEREAS**, as a condition of the County Board providing the Borrower with the Federal CDBG Loan, the Borrower has agreed to record in the Clerk’s office of the Circuit Court of Arlington County, Virginia a Declaration of Restrictive Covenants, Conditions and Restrictions (the “**Borrower Declarations**”), dated the Effective Date, substantially in the form attached hereto as **Exhibit F**, containing covenants, conditions and restrictions regarding the ownership, operation, use, rent and occupancy of The Shell Site Project during the Affordability Compliance Period (as defined below); and

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing and the covenants and agreements of the Parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties hereby agree as follows:

**ARTICLE I**  
**INCORPORATION OF RECITALS; DEFINITIONS; AND EXHIBITS**

**Section 1.01. Incorporation of Recitals.** The foregoing recitals above are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement. Accordingly, the foregoing recitals are fully incorporated into this Agreement by this reference as if fully set forth herein.

**Section 1.02. Specific.** In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

***“Amended and Restated CDBG Subrecipient and Loan Agreement”*** means the amendment and restatement of this Agreement in order to further facilitate the development, financing, and new construction of The Shell Site Project.

***“CDBG Loan Documents”*** means those documents that collectively set forth the terms of the agreement between the Parties in connection with the Federal CDBG Loan, consisting of (i) this Agreement, (ii) the CDBG Promissory Note, (iii) the CDBG Deed of Trust, (iv) Borrower Declarations, and (v) all other documents now or hereafter executed by the Borrower or Guarantor in connection with the Federal CDBG Loan delivered to and accepted by the County Board, the terms of such other CDBG Loan Documents being hereby incorporated by reference and as each are amended, supplemented, extended, renewed or otherwise modified from time to time.

***“Force Majeure”*** means strikes, acts of God, severe or unusual shortages of labor or materials, enemy action, riot, war, act of terrorism, civil commotion, fire, unavoidable casualty, or other causes beyond the reasonable control of a party. Lack of funds shall not be deemed a cause beyond the control of a party.

***“Low-Income Household”*** means a household whose gross income does not exceed sixty percent (60%) of the Area Median Income, adjusted for Actual Household Size.

***“Subsequent County Financing Agreements”*** means the Amended and Restated CDBG Subrecipient and Loan Agreement and the Shell Site Project AHIF Loan Agreement.

***“Shell Site Project AHIF Loan Agreement”*** means the loan agreement between the County Board and the Borrower with respect to the loan of Arlington Housing Investment Fund monies to the Borrower to help finance the development and new construction of The Shell Site Project.

***“Very Low-Income Household”*** means a household whose gross income does not exceed fifty percent (50%) of the Area Median Income, adjusted for a Actual Household Size.

**Section 1.03. General.** Any other capitalized term to which a meaning is expressly given in this Agreement shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders.

**Section 1.04. Exhibits.** The following Exhibits are attached to this Agreement and are fully incorporated into this Agreement by this reference as if fully set forth herein:

Exhibit A	Legal Description of the Shell Site Property
Exhibit B	Legal Description of the Harvey Hall Property
Exhibit C	Use of Federal CDBG Loan Funds
Exhibit D	Form of CDBG Promissory Note
Exhibit E	Form of CDBG Deed of Trust
Exhibit F	Form of Borrower Declarations
Exhibit G	Form of Borrower's Counsel Required Legal Opinion

## ARTICLE II LOAN PROVISIONS

**Section 2.01. Federal CDBG Loan.** In reliance upon the Borrower's representations, warranties and covenants herein, the County Board hereby agrees to loan to the Borrower the Federal CDBG Loan in an aggregate principal sum which shall not exceed Three Million Seventy Eight Thousand Thirty Four and 00/100 Dollars (\$3,078,034.00) of CDBG program funds, subject to the terms and conditions of this Agreement and the other CDBG Loan Documents.

**Section 2.02. Term of the Federal CDBG Loan.** The Federal CDBG Loan and this Agreement shall have a term (the "Term") of sixty (60) months, commencing on the Effective Date and continuing for sixty (60) months thereafter.

**Section 2.03. Interest on the Federal CDBG Loan; Default Rate.**

(a) As further set forth in the County CDBG Promissory Note, and subject to the provisions of Section 2.03(b) below, the unpaid principal balance of the Federal CDBG Loan shall accrue interest at the below market rate of two and six-tenths percent (2.6%) per annum on the outstanding amount, accruing immediately upon execution of this Agreement and compounded annually as called for in the County CDBG Promissory Note.

(b) If there is an Event of a Default by the Borrower, interest on the Federal CDBG Loan shall begin to accrue, as of the date of the Event of Default and continue until the earlier of either when the outstanding principal and accrued interest on Federal CDBG Loan has been repaid in full to the County Board or when the Event of Default has been cured, at the default rate of the lesser of fifteen percent (15%) compounded annually, or the highest rate permitted by law (the "Default Rate").

**Section 2.04. Security.** Borrower's obligation to repay the Federal CDBG Loan, as evidenced by the County CDBG Promissory Note, is secured by the CDBG Deed of Trust which is recorded as a lien against the Required Project Property.

**Section 2.05. Repayment Schedule.** Unless the County Board and the Borrower enter into Subsequent County Financing Agreements, as provided for in Article III below, the Federal CDBG Loan shall be due and payable in full sixty (60) months from the Effective Date.

**Section 2.06. Disbursement of Federal CDBG Loan Funds.**

(a) **Conditions.** Notwithstanding any other provision of this Agreement to the contrary, the County Board shall have no obligation to disburse any of the Federal CDBG Loan funds to the Borrower unless and until all of the following conditions (collectively the "Funding Conditions") have been satisfied:

(1) Borrower shall have provided the County Attorney with an executed copy of the Agreement of Purchase and Sale between the Borrower and the Shell Site Seller; and

(2) Borrower shall have provided the County Attorney with an executed copy of the Agreement of Purchase and Sale between the Borrower and the Harvey Hall Site Seller; and

(3) Borrower shall have applied for all required permits and discretionary land use entitlements necessary to allow the Borrower to demolish the Columbia Pike Food Mart and Shell Gas Station located on the Shell Site Property; and

(4) Borrower shall have provided the County Manager with written confirmation that the Borrower has secured a commitment for additional financing, if required, to cover the full costs of the CDBG-Eligible Project Activities; and

(5) Borrower shall have provided the County Attorney with a copy of Borrower's organizational documents satisfactory to the County Attorney documenting the power and authority of Borrower to enter into and perform its obligations under this Agreement and the CDBG Loan Documents; provided, that the Borrower's possession of title to the Harvey Hall Property need not be precedent for disbursement of the Federal CDBG Loan funds; and

(6) Borrower shall have provided the County Attorney with a copy of a resolution or other corporate document satisfactory to the County Attorney authorizing Borrower's authority to acquire and own the Required Project Property and construct and operate The Shell Site Project and to execute this Agreement and the CDBG Loan Documents; and

(7) Borrower shall have executed and delivered to the County Attorney all documents, instruments, and policies required under the CDBG Loan Documents; and

(8) Borrower shall have provided to the County Attorney evidence of the insurance coverage meeting the requirements of this Agreement; and

(9) Borrower shall certify in writing to the County Attorney that there exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement and the CDBG Loan Documents; and

(10) Borrower shall have provided to the County Attorney with a legal opinion from the Borrower's Attorney addressed to the County Board, in substantially the form attached hereto as **Exhibit G**, opining, among other things, that the Borrower is in full compliance with all legal requirements in its formation and execution of the CDBG Loan Documents.

In the event that any of the Funding Conditions are not satisfied on or before the Effective Date, or such later date as may be approved in writing by the County Attorney in the sole and absolute discretion of the County Attorney, the County Board may terminate this Agreement by delivering written notice to the Borrower.

(b) In the event the foregoing Funding Conditions have been satisfied, the County Board shall disburse the Federal CDBG Loan funds to the Borrower by wire transfer to the following account:

Bank:	_____
ABA:	_____
Acct#:	_____
	_____
	_____
Reference:	_____
Advise:	_____

**Section 2.07. Permissible Uses of the Federal CDBG Loan Funds.**

(a) The Borrower represents and warrants that it shall use the Federal CDBG Loan funds solely to defray such costs and expenses related to the authorized CDBG-Eligible Project Activities, as listed in the Use of Federal CDBG Loan Funds chart on **Exhibit C** hereof. Pursuant to applicable federal law and regulations, the County Staff shall monitor actual use of the Federal CDBG Loan funds and require the Borrower to produce records in support thereof and certify in writing that the Federal CDBG Loan funds have been used and applied as required by this Agreement and applicable federal law.

(b) The Borrower shall not use the Federal CDBG Loan funds for any purpose other than as stated in Section 2.07(a).

(c) If applicable, any unspent Federal CDBG Loan funds shall be returned to the County Board.

(d) Any allocated but undisbursed Federal CDBG Loan funds shall be retained by the County Board and shall remain County Board funds.

**Section 2.08. Limited Recourse Loan.** The Federal CDBG Loan is a limited recourse obligation of the Borrower. The County Board's recovery against the Borrower with respect to the Federal CDBG Loan shall be limited solely to the County Board's security in the Required Project Property, except that the Borrower may be personally liable to the County Board for any losses or damages incurred by the following matters: (a) fraud or willful misrepresentation or (b) any breach by the Borrower of any covenant in the CDBG Deed of Trust or this Agreement regarding Hazardous Materials. The officers, employees or agents of the Borrower shall not have any direct or indirect personal liability to the County Board for payment of the principal of, or interest on, the Federal CDBG Loan or the performance of the covenants of the Borrower under this Agreement.

**ARTICLE III**  
**SUBSEQUENT AGREEMENTS FOR THE DEVELOPMENT OF THE SHELL**  
**SITE PROJECT**

**Section 3.01. Execution of Subsequent County Financing Agreements.** The purpose and reason for the County Board's willingness to enter into this Agreement and loan CDBG funds to the Borrower for the acquisition of the Required Project Property is facilitate the development and construction of The Shell Site Project which will provide income-restricted, affordable housing rental units for Low-Income Households and Very Low-Income Households on the Required Project Property. Within two (2) months from the Effective Date, the Borrower and County Staff will negotiate a Subsequent County Financing Agreement for the development, financing and new construction of income-restricted, affordable housing rental units on the Required Project Property, with such new construction for The Shell Site Project to be commenced no later than September 1, 2013.

**ARTICLE IV**  
**REQUIREMENTS DURING THE TERM OF THE FEDERAL CDBG LOAN**

**Section 4.01. Information.** The Borrower shall provide any and all information reasonably required by the County Staff in connection with the negotiation of the Subsequent County Financing Agreements.

**Section 4.02. Release of Hazardous Substances.** Borrower covenants and agrees that it shall not release or permit any release or threat of release of any Hazardous Substances on the Required Project Property, nor generate or permit any Hazardous Substances to be generated on the Required Project Property; nor store or permit any Hazardous Substances to be stored on the Required Project Property (unless such substance is customarily used in connection with construction or operation of a housing development and either a permit is issued therefor or such storage is allowed by applicable law). The Borrower shall provide the County Board with prompt written notice: (a) upon the Borrower's becoming aware of any release or threat of release of any Hazardous Substances upon, under or from the Required Project Property; (b) upon the Borrower's receipt of any notice from any federal, state, municipal or other governmental agency or authority in connection with any Hazardous Substance located upon or under the Required Project Property, or emanating from the Required Project Property; and (c) upon the Borrower's obtaining knowledge of the incurring of any expense by any governmental authority in connection with the assessment, containment or removal of any Hazardous Substances located upon or under the Required Project Property or emanating from the Required Project Property. The Borrower hereby covenants and agrees, at its sole cost and expense, to promptly take all remedial action necessary to assess, contain, monitor, remediate and remove all Hazardous Substances which are located upon or released at the Required Project Property in such a manner as to bring the Required Project Property in compliance with applicable legal requirements, and to take all actions necessary or appropriate to avoid any liability of or claims against the Borrower, or any subsequent owner of the Required Project Property, and to avoid the imposition of any liens on the Required Project Property as a result of the presence of Hazardous Substances thereon. The Borrower hereby covenants and agrees, at its sole cost and expense, to provide to the County Board all professional environmental assessments prepared with respect to the Required Project Property at any time while the Federal CDBG Loan is outstanding and such other information with respect to Hazardous Substances at the Required Project Property the County Board from time to time may require. "**Hazardous Substances,**" as used in this Agreement, shall include, without limitation, oil, asbestos, urea formaldehyde foam insulation, lead paint, radioactive materials, polychlorinated biphenyls, hazardous wastes, toxic substances or related materials, or any other hazardous material, hazardous waste or hazardous substance, as those terms are defined by any applicable law, rule or regulation including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq. Notwithstanding the foregoing, the County's Director of Housing Division and Housing Development Coordinators are aware of the environmental conditions of the Shell Site Property and

understand the Borrower's plan to remediate environmental conditions in coordination with the Shell Site Seller.

**Section 4.03. Maintenance and Damage.** The Borrower shall maintain the Required Project Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this Section 4.03, and if the Borrower has not cured such condition within thirty (30) days after receiving a County notice of such a condition, or, if the condition cannot be cured within thirty days of such notice, the Borrower has not diligently pursued a cure and has not cured such condition within ninety (90) days, then in addition to any other rights available to the County Board, the County Board shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Required Project Property.

**Section 4.04. Fees and Taxes.** The Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Required Project Property, and shall pay such charges prior to delinquency. However, the Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the County Manager, the Borrower deposits with the County Staff any funds or other forms of assurance that the County Board in good faith from time to time determines appropriate to protect the County Board from the consequences of the contest being unsuccessful.

**Section 4.05. Notice of Litigation.** The Borrower shall promptly notify the County Attorney in writing of any material litigation affecting the Borrower or the Required Project Property and of any claims or disputes that involve a material risk of such litigation.

**Section 4.06. Transfers.**

(a) For purposes of this Agreement, "**Transfer**" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Required Project Property, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Required Project Property is transferred.

(b) No Transfer shall be permitted without the prior written consent of the County Board, which the County Board may withhold in its reasonable discretion in order to ensure that the intent of this Agreement is fulfilled. The Federal CDBG Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

(c) Notwithstanding anything to the contrary contained herein, the County Board hereby consents to the following Transfers: (i) the transfer to a nonprofit corporation or limited liability partnership affiliated with AHC, or (ii) the transfer to a limited liability partnership of which the AHC or a nonprofit corporation or limited liability company affiliated with AHC is the general partner.

**Section 4.07. Insurance Requirements.**

(a) Borrower covenants and agrees that from the Effective Date until the end of the Term of the Federal CDBG Loan, the Borrower shall maintain the following insurance coverage:

(1) To the extent required by law, Workers' Compensation insurance in accordance with the Virginia Workers' Compensation Act; and

(2) Commercial General Liability insurance with limits not less than \$2,000,000 per occurrence and \$5,000,000 in the aggregate, including coverage for contractual liability, personal injury, broadform property damage, products and completed operations; and

(3) Automobile Liability insurance with limits not less than \$1,000,000, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Borrower does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required; and

(4) All Risk / Property and Fire insurance covering the entire Property for full replacement value.

(5) Crime insurance, to include employee dishonesty, in the amount of \$1,000,000 per occurrence, with a deductible not to exceed \$25,000.

(b) All insurance required by this Agreement shall be with a company acceptable to the County Staff and authorized to transact business in the Commonwealth of Virginia. The required insurance shall be provided under an occurrence form, and shall be maintained continuously so long as any County CDBG Promissory Note relating to this Agreement is outstanding. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(c) Commercial, General Liability, All Risk / Property, Fire and Automobile Liability insurance policies shall be endorsed to name as an "Additional Insured" the County Board, and its respective officers, agents and employees and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County Board and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the County Board's insurance.

(d) Prior to disbursement of any funds pursuant to this Agreement, Borrower shall deliver certificates of insurance to the County Staff showing that Borrower has in effect the insurance required by this Agreement. The Borrower shall deliver a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate previously

delivered to the County Staff. Acceptance or approval of insurance shall in no way modify or change the indemnification clause contained in Section 8.04 of this Agreement, which shall remain in full force and effect.

(e) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice to the County of cancellation, reduction in coverage, or intent not to renew and such written notice shall be provided to the address for notices to the County.

(f) Borrower covenants and agrees that during the pendency of the Borrower Declarations recorded against the Required Project Property, Borrower and any successor shall use any insurance proceeds awarded to repair or replace any damage to the Required Project Property.

**Section 4.08. County's Role as Lender.** Borrower hereby covenants, agrees and acknowledges that the County Board has entered into this Agreement in its role as lender under this Agreement and not as a governing authority. Accordingly, County Board's execution of this Agreement shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including, without limitation, for the development and construction of The Shell Site Project. Whenever in this Agreement the County Board is required to join in, consent, give its approval, or otherwise act under this Agreement, it is understood that such obligations are meant to apply to County Board acting in its capacity as a lender and not in its capacity as a governing authority. Further, Borrower hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by County Board pursuant to this Agreement, whether or not specifically contemplated hereunder, may be taken by the County Manager, County Attorney or by another Arlington County official or body pursuant to any means, mechanism or process as determined by the County Board in its sole discretion, and Borrower shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by County Board; provided such decision, determination, consent, notification, or other action by County Board is taken in accordance with all applicable laws, rules, regulations, ordinances, codes, procedures, processes and orders. Notwithstanding the foregoing, nothing in this Agreement shall be construed to waive any of County Board's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Required Project Property, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.

**ARTICLE V**  
**COMMUNITY DEVELOPMENT BLOCK GRANT REQUIREMENTS AND**  
**CONDITIONS**

**Section 5.01. Administrative Requirements. .**

(a) Financial Management

(1) *Accounting Standards.* The Borrower and the Guarantor agree to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

(2) *Cost Principles.* The Borrower and the Guarantor shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

(b) Documentation and Record Keeping

(1) *Records to be Maintained.* The Borrower shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Intentionally Omitted;
- c. Intentionally Omitted;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

(2) *Retention.* The Borrower shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this

Agreement for a period of at least four (4) years after the Term. The retention period begins on the date of the submission of the County Board's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

(3) *Intentionally Omitted.*

(4) *Intentionally Omitted.*

(5) *Close-outs.* The Borrower's obligation to the County Board shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of the Shell Site Property, and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Borrower has control over CDBG funds, including program income.

(6) *Audit and Inspections.* All Borrower records with respect to any matters covered by this Agreement shall be made available to the County Board, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Borrower within 30 days after receipt by the Borrower. Failure of the Borrower to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Borrower hereby agrees to have an annual agency audit conducted in accordance with current County Board policy concerning subrecipient audits and OMB Circular A-133.

(c) Reporting and Payment Procedures

(1) *Program Income.* The use of program income by the County Board shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the County Board may use such income during the Term for activities permitted under applicable federal regulations and shall reduce requests for additional funds by the amount of any such program income balance on hand. All unexpended program income shall be returned to the County Board at the end of the Term.

(2) *Intentionally Omitted.*

(3) *Payment Procedures.* The County Board will loan to the Borrower funds available under this Agreement based upon information submitted by the Borrower and consistent with any approved budget and County Board policy concerning

loan payments. Loan payments will be made for eligible expenses actually incurred by the Borrower, and not to exceed actual cash requirements.

(4) *Progress Reports.* The Borrower shall submit regular progress reports to the County Staff in the form, content, and frequency as required by the County Staff.

(d) Procurement

(1) *Intentionally Omitted.*

(2) *OMB Standards.* Unless specified otherwise within this Agreement, the Borrower shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

(3) *Intentionally Omitted.*

(e) Use and Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

(1) The Borrower shall transfer to the County Board any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

(2) Real property under the Borrower's control that was acquired or improved, in whole or in part, with loan funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement. If the Borrower fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Borrower shall pay the County Board an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the County Board. The Borrower may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

(3) *Intentionally Omitted.*

**Section 5.02. General Conditions.**

(a) General Compliance. The Borrower agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Borrower does not assume the County Board's environmental responsibilities described in 24 CFR 570.604 and (2) the Borrower does not assume the County Board's responsibility for initiating the

review process under the provisions of 24 CFR Part 52. The Borrower also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The Borrower further agrees to utilize loan funds available under this Agreement to supplement rather than supplant funds otherwise available.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Workers' Compensation. The Borrower shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

(e) Insurance and Bonding. The Borrower shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the County Board. The Borrower shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

(f) County Recognition. The Borrower shall insure recognition of the role of the County Board in providing loan funds through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Borrower will include a reference to the support provided herein in all publications made possible with loan funds made available under this Agreement.

(g) Intentionally Omitted.

(h) Suspension or Termination. In accordance with 24 CFR 85.43, the County Board may suspend or terminate this Agreement if the Borrower materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

(1) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

(2) Failure, for any reason, of the County Board to fulfill in a timely and proper manner its obligations under this Agreement;

(3) Ineffective or improper use of loan funds provided under this Agreement; or

(4) Submission by the Borrower to the County Staff reports that are incorrect or incomplete in any material respect.

### **Section 5.03. Environmental Conditions.**

(a) Air and Water. The Borrower agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

(1) Clean Air Act, 42 U.S.C., 7401, *et seq.*;

(2) Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and

(3) Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

(b) Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Borrower shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

(c) Lead-Based Paint. The Borrower agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

(d) Historic Preservation. The Borrower agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

### **Section 5.04. Personnel and Participant Conditions.**

(a) Civil Rights.

(1) Compliance. The Borrower agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as

amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

(2) *Nondiscrimination.* The Borrower agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

(3) *Land Covenants.* This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Borrower shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the County Board and the United States are beneficiaries of and entitled to enforce such covenants. The Borrower, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

(4) *Section 504.* The Borrower agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The County Staff shall provide the Borrower with any guidelines necessary for compliance with that portion of the regulations in force during the Term of this Agreement.

(b) Affirmative Action.

(1) *Intentionally Omitted.*

(2) *Women- and Minority-Owned Businesses (W/MBE).* The Borrower will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

(3) *Access to Records.* The Borrower shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the County Staff, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

(4) *Intentionally Omitted.*

(5) *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* The Borrower will, in all solicitations or advertisements for employees placed by or on behalf of the Borrower, state that it is an Equal Opportunity or Affirmative Action employer.

(6) *Subcontract Provisions.* The Borrower will include the provisions of Sections 3.04(a), Civil Rights, and (b), Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

(c) Employment Restrictions.

(1) *Prohibited Activity.* The Borrower is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

(2) *Labor Standards.* The Borrower agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Borrower agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Borrower shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to County Staff for review upon request.

The Borrower agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the County Board pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Borrower of its obligation, if any, to require

payment of the higher wage. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

(3) *“Section 3” Clause.*

A. Compliance.

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the County Board, the Borrower, as subrecipient, and any of the Borrower’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the County Board, the Borrower and any of the Borrower’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Borrower certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Borrower further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Borrower further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for

low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Borrower certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

B. Intentionally Omitted.

C. Subcontracts.

The Borrower will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Borrower will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(d) Conduct.

(1) *Intentionally Omitted.*

(2) *Subcontracts.*

A. Approvals. The Borrower shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the County Board prior to the execution of such agreement.

B. Monitoring. The Borrower will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

C. Content. The Borrower shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

D. Selection Process. The Borrower shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the County Staff along with documentation concerning the selection process.

(3) *Hatch Act.* The Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

(4) *Conflict of Interest.* The Borrower agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

A. The Borrower shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

B. No employee, officer or agent of the Borrower shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

C. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the County, the Borrower, or any designated public agency.

(5) *Lobbying.* The Borrower certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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;

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

C. It will require that the language of paragraph D of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

D. Lobbying Certification

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

(6) *Copyright.* If this Agreement results in any copyrightable material or inventions, the County Board and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

(7) *Religious Activities.* The Borrower agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**Section 5.05. Relocation, Real Property Acquisition and One-for-One Housing Replacement.** The Borrower agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Borrower shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The County Board also agrees to comply with applicable County Board ordinances, resolutions and policies concerning the displacement of persons from their residences.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

As a material inducement to the County Board's entry into this Agreement, the Borrower hereby (i) makes the following representations and warranties to the County Board, as of the Effective Date, (ii) covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Agreement not to be true, Borrower shall immediately give written notice of such fact or condition to the County Board, (iii) acknowledges that the County Board shall rely upon Borrower's representations made herein notwithstanding any investigation made by or on behalf of the County Board, and (iv) agrees that such representations and warranties shall survive termination of this Agreement:

**Section 6.01. Organization.** Borrower is duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has the power and authority to own the Required Project Property and The Shell Site Project and carry on its business as now being conducted. The Borrower's general partner is a duly organized and validly existing non-stock corporation and is in good standing under the laws of the Commonwealth of Virginia.

**Section 6.02. Authority of the Borrower.** Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the CDBG Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

**Section 6.03. Authority of Persons Executing Documents.** This Agreement and the CDBG Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the CDBG Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

**Section 6.04. Valid Binding Agreements.** This Agreement and the CDBG Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms, subject to laws affecting creditors rights and principles of equity.

**Section 6.05. No Breach of Law or Agreement.** Neither the execution nor delivery of this Agreement and the CDBG Loan Documents or any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will materially conflict with or constitute a material breach of or a material default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon assets or property of Borrower, other than liens established pursuant hereto.

**Section 6.06. Compliance with Laws; Consents and Approvals.** The Shell Site Project will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and will comply with all applicable directions, rules and regulations of the fire marshal, health officers, building inspector and other officers of any such government or agency.

**Section 6.07. Pending Proceedings.** Borrower is not in default in any material respect under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or The Shell Site Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Federal CDBG Loan or renovate, operate or maintain the Required Project Property, or impair the security to be given to the County Board pursuant hereto.

**Section 6.08. Title to Land.** At the time of recordation of the CDBG Deed of Trust, Borrower shall have good and marketable fee title to the Required Project Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County Board or approved in writing by the County Board.

**Section 6.09. Financial Statements.** The financial statements of Borrower and other financial data and information furnished by Borrower to the County Board at any time during the Term fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information delivered to the County Board at or before the Effective Date.

**Section 6.10. Loan Proceeds and Adequacy.** The proceeds from the Federal CDBG Loan, together with the other funding identified in this Agreement are sufficient cover the costs associated with the CDBG-Eligible Project Activities in accordance with the intent, terms and conditions of this Agreement.

**Section 6.11. Accuracy.** All reports, documents, instruments, information and forms of evidence delivered to the County Board concerning the Federal CDBG Loan or required by the CDBG Loan Documents and this Agreement are accurate, correct and sufficiently complete to give the County Board true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

**Section 6.12. Tax Liability.** Borrower has filed all required federal, state, county and municipal tax returns and has paid all taxes and assessments owed and payable, and Borrower has no knowledge of any basis for any additional payment with respect to any such taxes and assessments.

**Section 6.13. Permits.** All permits, consents, permissions and licenses required by any federal, state or local government or agency to which the Borrower or the Required Project Property is subject, which may be necessary in relation to this Agreement or the acquisition, renovation, construction, operation or ownership of the Required Project Property, at, prior, or subsequent to the commencement of the Renovation Project have been, or will be, obtained and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.

**Section 6.14. No Hazardous Substances.** To the best of the Borrower's knowledge, no Hazardous Substances has been or is being generated, stored, released or disposed of on, under or from the Required Project Property, except for certain hazardous substances as previously disclosed to the County's Director of Housing Division and Housing Development Coordinators in written environmental reports delivered to the County's Director of Housing Division and Housing Development Coordinators, as to all of which Hazardous Substances the Borrower shall work with the Shell Site Seller to undertake and complete all necessary and appropriate response actions (including without limitation removal, encapsulation and/or remediation) in accordance with all applicable legal requirements in order to achieve a level of no significant risk to human health, public welfare or the environment, prior to completion of The Shell Site Project and occupancy of any units therein.

**Section 6.15. Affiliate of AHC.** Borrower is an ownership affiliate of AHC, Inc.

**ARTICLE VII  
DEFAULT AND TERMINATION**

**Section 7.01. Events of Default.** Each of the following shall constitute an event of default on the part of Borrower (“**Event of Default**”):

- (a) Intentionally Omitted.
- (b) Non-Permissible Uses of the Federal CDBG Loan Funds. Any use of the Federal CDBG Loan funds by the Borrower other than for permissible uses referenced in Section 2.07(a).
- (c) Failure to Make Payment. Failure to pay all outstanding principal and any accrued interest on the Federal CDBG Loan, together with any other sums evidenced by the County CDBG Promissory Note or secured by the CDBG Deed of Trust and/or any other CDBG Loan Documents within ten (10) days following written notice from the County Manager.
- (d) Unauthorized Transfer. Any Transfer other than as permitted by the express, written consent of the County Board, or as otherwise permitted as provided in Section 4.06.
- (e) Delinquent Taxes. Subject to Borrower’s right to contest the following charges, if Borrower fails to pay prior to delinquency taxes or assessments due on the Required Project Property or fails to pay when due any other charge that may result in a lien on the Required Project Property, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien.
- (f) Default on Secured Debt. Following Borrower’s acquisition of the Required Project Property, a default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Required Project Property or Borrower’s interest therein, and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan.
- (g) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, the CDBG Loan Documents, or in any application, financial statement, certificate, or report submitted to the County in connection with this Agreement or any of the CDBG Loan Documents, proving to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the County.
- (h) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor’s relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver,

trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency for any of its properties; (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of sixty (60) days; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without need for any action by the County Board, the indebtedness evidenced by the Borrower's promissory notes to the County Board.

(i) Assignment; Attachments. Borrower shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution of any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attached or execution. The occurrence of any of the Events of Default in this paragraph shall act to accelerate automatically, without need for any action by the County Board, the indebtedness evidenced by the Borrower's promissory notes to the County Board.

(j) Suspension; Termination. Borrower or AHC shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(k) Liens on Property. There shall be filed any claim of lien (other than liens approved in writing by the County Board) against the Required Project Property of any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Federal CDBG Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefor satisfactory to the County Board.

(l) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement or any of the CDBG Loan Documents.

(m) Default Under Other Agreements. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any agreement entered into between Borrower and any other party, which agreement provides debt financing for, or otherwise facilitates, the development, renovation or operation of The Shell Site Project, subject to the grace periods therein.

(n) Notice, Cure Period. Unless a shorter cure period is specified for a default in the performance of any term, provision, covenant or agreement contained in this Agreement, including the obligations enumerated in this Section 7.01, no default shall mature into an "Event of Default" and the County Board shall not exercise any right or remedy on account thereof unless the default continues for ten (10) days in the event of

a monetary default or sixty (60) days in the event of a nonmonetary default after the date upon which the County Board shall have given written notice of the default to the Borrower; provided, however, if the nonmonetary default is of a nature that cannot be cured within sixty (60) days, an Event of Default shall not arise hereunder if Borrower commences to cure the default within sixty (60) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

**Section 7.02. Remedies.** The occurrence of any Event of Default, following the expiration of all applicable notice and cure periods will, either at the option of the County Board or automatically when so specified, relieve the County Board of any obligation to make or continue disbursements pursuant to any County Board loan and shall give the County Board the right to proceed with any and all remedies set forth in this Agreement and the various CDBG Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The County Board shall have the right to declare and cause all indebtedness of the Borrower to the County Board under this Agreement and the County CDBG Promissory Note, together with any accrued interest thereon, to become immediately due and payable. After such declaration, interest on the Federal CDBG Loan and any outstanding amount shall immediately begin to accrue interest at the Default Rate until paid to the County Board. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County Board may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County Board as a creditor under the law including the Uniform Commercial Code. The Borrower shall be liable to pay the County Board on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County Board in connection with the collection of the Federal CDBG Loan or any other indebtedness related to this Agreement.

(b) Specific Performance. The County Board shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under this Agreement, including the various CDBG Loan Documents, or to enjoin acts on things which may be unlawful or in violation of the provisions of this Agreement or the CDBG Loan Documents.

(c) Right to Cure Borrower's Expense. The County Board shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Federal CDBG Loan. The Borrower agrees to reimburse the County Board for any funds advanced by the County Board to cure a monetary default by Borrower upon demand therefor, together with interest thereon at the Default Rate until the date of reimbursement. The County Board shall have the right (but not the obligation) to cure any default in the performance of Borrower's obligation to renovate the Required Project Property, and Borrower agrees to reimburse the County Board for any funds advanced by the County Board to cure such default by Borrower upon demand therefor.

(d) Replacement of Housing Management. The County Board shall have the right (but not the obligation) to substitute those associated with operating and

managing the Required Project Property, including on-site and off-site personnel, with other personnel of the County Board's selection, and charge Borrower with any costs associated therewith.

(e) All Other Remedies. The County Board shall have the right to pursue any other remedy provided in any of the other CDBG Loan Documents or allowed by law or equity.

**Section 7.03. Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other right or remedy for the same default or any other default by the other party.

**ARTICLE VIII  
MISCELLANEOUS PROVISIONS**

**Section 8.01. Notices, Demands, and Communications Between the Parties.**

Formal notices, demands, and communications between the Borrower, County Board and Guarantor shall be given either by (a) personal service, (b) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (c) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (d) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed to:

**To the County:** Department of Community Planning, Housing, and Development

2100 Clarendon Boulevard, Suite 700  
Arlington, Virginia 22201  
Attn: Ken Aughenbaugh  
Email: [KAughenbaugh@ArlingtonVA.US](mailto:KAughenbaugh@ArlingtonVA.US)

**With a Copy to:** Office of the Arlington County Attorney  
2100 Clarendon Blvd, Suite 403  
Arlington, Virginia 22201  
Attn: Robert E. Dawson, Assistant County Attorney  
Fax: (703) 228-7106  
Email: [RDawson@ArlingtonVA.US](mailto:RDawson@ArlingtonVA.US)

**To the Borrower:** AHC Limited Partnership – 23  
2230 North Fairfax Drive, Suite 100  
Arlington, Virginia 22201  
Attn: Walter D. Webdale, President  
Fax: (703) 486-0653  
Email: [Webdale@ahcinc.org](mailto:Webdale@ahcinc.org)

**With a Copy to:** Klein Hornig, LLC  
1275 K Street, NW, Suite 1200  
Washington, DC 20005  
Attn: Erik T. Hoffman  
Fax: 202.842.3936  
Email: [ehoffman@kleinhornig.com](mailto:ehoffman@kleinhornig.com)

**With a Copy to:** Shulman Rogers  
12505 Park Potomac Avenue, 6<sup>th</sup> Floor  
Potomac, MD 20854  
Attn: Howard Ross  
Fax: 301.230.2891  
Email: [hross@shulmanrogers.com](mailto:hross@shulmanrogers.com)

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing.

**Section 8.02. Relationship of Parties.** The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Parties as lender, borrower and guarantor and no relationship of partnership, joint venture or other joint enterprise shall be deemed to be created hereby by and among the Parties pursuant to this Agreement.

**Section 8.03. Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

**Section 8.04. Indemnification.** The Borrower shall indemnify, defend and hold the County and its respective Board members, officers, employees, agents, successors and assigns harmless from and against: (a) any and all claims, liabilities and losses whatsoever (together with any expenses related thereto, including but not limited to, damages, court costs and reasonable attorneys fees) occurring to or resulting from any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, (b) any and all claims, liabilities and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Borrower's performance of this Agreement, including but not limited to any such claims, liabilities or losses which occur on or adjacent to the Required Project Property, and (c) such claims, liabilities, or losses which arise out of the renovation, construction and operation of the Required Project Property. "Borrower's performance" includes Borrower's action or inaction and the action or inaction of Borrower's officers, employees, agents, contractors, and subcontractors. This indemnification and hold harmless obligation shall not extend to any claim arising out of the gross negligence or willful misconduct of the County Board and its respective employees and agents. The provision of this Section 8.04 shall survive the expiration of the Term or other termination and the re-conveyance of the CDBG Deed of Trust.

**Section 8.05. Non-Liability of Officials, Employees and Agents.** No member, official, employee or agent of the County shall be personally liable to Borrower in the event of any default or breach by the County or for any amount which may become due to Borrower or its successors or assigns or on any obligation under the terms of this Agreement.

**Section 8.06. No Third-Party Beneficiaries.** No provision of this Agreement shall be construed to confer any rights upon any person or entity who is not a Party hereto, whether a third-party beneficiary or otherwise.

**Section 8.07. Parties Bound.** Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and, subject to Section 5.03 above, shall bind Borrower and its successors and assigns in the Required Project Property for the entire Term, and the benefit hereof shall inure to the benefit of the County and its successors and assigns.

**Section 8.08. Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

**Section 8.09. Governing Law.** This Agreement and the CDBG Loan Documents shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia. The parties consent to the jurisdiction and venue of the courts of the Circuit Court for the County of Arlington, Virginia.

**Section 8.10. Liability of the County.** The County Board, by the acceptance and performance of this Agreement does not assume any liability (other than to the Borrower pursuant to the terms hereof), and the Borrower and the Guarantor hereby release the County Board and any of its individual agents or employees from any such liability, and no claim shall be made by the Borrower or the Guarantor upon the County Board or such employees or agents for or on account of any matter or thing.

**Section 8.11. Exhibits.** All Exhibits referred to in this Agreement are by such references fully incorporated herein.

**Section 8.12. Entire Agreement, Waivers and Amendments.** This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to the Federal CDBG Loan. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the Parties.

**Section 8.13. Time of the Essence.** Time is of the essence in the performance of this Agreement.

**Section 8.14. Language Construction.** The language of each and all paragraphs, terms and/or provisions of this Agreement, shall in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any Party and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

**Section 8.15. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

**Section 8.16. No Waiver of Sovereign Immunity by County.** Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by County Board pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the County's elected and appointed officials, officers and employees.

**THE SIGNATURE(S) OF THE PERSON(S) EXECUTING THIS CDBG SUBRECIPIENT AND LOAN AGREEMENT ON BEHALF OF THE BORROWER AND THE COUNTY ARE SET FORTH ON THE EXECUTION PAGE(S) IMMEDIATELY FOLLOWING THIS PAGE.**

**IN WITNESS WHEREOF**, the County Board and the Borrower have each executed, or caused to be duly executed, this Agreement under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, thereunto duly authorized) as of the day and year first written above.

**Approved as to form:**

**THE COUNTY BOARD OF  
ARLINGTON COUNTY, VIRGINIA**, a  
body politic

\_\_\_\_\_  
Stephen MacIsaac, County Attorney

By: \_\_\_\_\_  
Barbara Donnellan, County Manager

**AHC LIMITED PARTNERSHIP -- 23**, a  
Virginia limited partnership

By: **THE SHELL HOUSING  
CORPORATION**, a Virginia non-  
stock corporation, its general partner

By: \_\_\_\_\_  
Walter D. Webdale, President

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**Exhibit A**  
**LEGAL DESCRIPTION OF THE SHELL SITE PROPERTY**

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Legal Property Code (RPC) Number and Street Addresses:

Description:

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**Exhibit B**  
**LEGAL DESCRIPTION OF THE HARVEY HALL PROPERTY**

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Legal Property Code (RPC) Number and Street Addresses:

Description:

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**Exhibit C**  
**USE OF FEDERAL CDBG LOAN FUNDS CHART**

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**Exhibit D**  
**FORM OF CDBG PROMISSORY NOTE**

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**Exhibit E**  
**FORM OF CDBG DEED OF TRUST**

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**Exhibit F**  
**FORM OF BORROWER DECLARATIONS**

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**Exhibit G**  
**FORM OF LEGAL OPINION**

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