ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of June 16, 2012

DATE: June 1, 2012

SUBJECT: Amend and Restate the Terms and Conditions of the Affordable Housing Investment Fund (**AHIF**) loan for Howard Manor Apartments to Howard Manor LLC .

C. M. RECOMMENDATIONS:

1. Approve the attached Amended and Restated Affordable Housing Investment Fund Loan Agreement for the $6,380,000 AHIF loan to Howard Manor, LLC, the County-approved ownership affiliate of Community Preservation and Development Corporation, which assisted with the acquisition of Howard Manor Apartments, a 76-unit apartment complex located at 2500-2510 20th Road North and 2001-2003 North Cleveland Street (RPC Numbers 15-007-066, -067).

2. Authorize the County Manager to execute, on behalf of the County Board, the amended and restated AHIF loan documents for the $6,380,000 AHIF loan to Howard Manor, LLC including the (i) Amended and Restated Affordable Housing Investment Fund Loan Agreement, (ii) Amended and Restated Promissory Note, (iii) Amended and Restated Deed of Trust, Assignment of Rents and Leases, and Security Agreement, and (iv) Amended and Restated 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 Deed of Trust, Assignment of Rents and Leases, and Security Agreement, and all related documents, subject to approval by the County Attorney.

3. Authorize the County Manager, with the concurrence of the County Attorney, to act as the County Board's representative in approving revisions to the amended and restated AHIF loan documents for the $6,380,000 AHIF loan to Howard Manor, LLC 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 amended and restated AHIF loan documents for the $6,380,000 AHIF loan to Howard Manor, LLC.

County Manager: BMD

County Attorney:

Staff: David Cristeal and Marie Randall, DCPHD, Housing Division

36.

ISSUES: County Board approval will ensure the viability of Howard Manor, LLC's overall financing package for this project. There are no outstanding issues.

SUMMARY: According to the Community Preservation Development Corporation (**CPDC**), a Maryland non-stock corporation and nonprofit organization formed and organized for the purpose of preserving financially sound, socially responsible, affordable housing for low and moderate income individuals and families in the Mid-Atlantic region, Howard Manor, LLC , the borrower of the County AHIF loan, was created by CPDC Howard Manor LLC (as managing partner of Howard Manor, LLC) and Community Housing, Inc. (as the initial investment member of Howard Manor, LLC), both CPDC ownership affiliates. On February 15, 2011, the County Board approved a $6,380,000 AHIF loan to Howard Manor, LLC to assist in the financing of the acquisition of Howard Manor Apartments, a 76-unit apartment complex. On July 28, 2011, Howard Manor, LLC used the funds from the County Board's $6,380,000 AHIF loan and the funds from a $3,750,000 loan from Low Income Investment Fund, a California nonprofit public benefit corporation (**LIIF**), to acquire Howard Manor Apartments for a total acquisition cost of $10,455,000. The County Board agreed to subordinate its $6,380,000 AHIF loan to LIIF's loan. On June 8, 2011, Howard Manor, LLC was notified that its application to the Virginia Housing Development Authority (**VHDA**) for a reservation of Low Income Housing Tax Credits (**LIHTC**) was successful and that it was awarded LIHTCs to help finance the comprehensive renovation of Howard Manor Apartments.

Since the award of the LIHTCs, Howard Manor, LLC, has been working with its development and financing team in order to finalize its plans and secure the interim and permanent financing required for the comprehensive renovation of the property. Howard Manor, LLC expects to close on its interim and permanent renovation financing on or before June 30, 2012, and begin the comprehensive renovation of Howard Manor Apartments shortly thereafter. In order to help facilitate the comprehensive renovation of Howard Manor Apartments, the County staff is requesting that the County Board amend and restate its AHIF loan documents in order to help Howard Manor, LLC secure interim and permanent renovation financing.

BACKGROUND: Howard Manor Apartments is a 76-unit apartment complex, consisting of three (3) colonial revival style walk-up garden apartment buildings located at 2500-2510 20th Road North and 2001-2003 North Cleveland Street, north of Lee Highway. On July 28, 2011, pursuant to the terms of an Affordable Housing Investment Fund Loan Agreement (**AHIF Loan Agreement**) and a Promissory Note, the County Board provided Howard Manor, LLC with a $6,380,000 AHIF residual receipts loan in order to help acquire the Howard Manor Apartments. The obligations of Howard Manor, LLC under the AHIF Loan Agreement and Promissory Note are secured by a Deed of Trust, Assignment of Rents and Leases, and Security Agreement (**AHIF Deed of Trust**), and a Declaration of Restrictive Covenants, Conditions and Restrictions (**AHIF Borrower Declarations**).

Howard Manor, LLC's comprehensive renovation of the Howard Manor Apartments, which is expected to begin in July 2012, will include, but not be limited to, (i) updating the property's electrical mechanical and plumbing systems, (ii) repairing the property's sidewalks and re-grading the property's parking lots, (iii) removing and abating any and all hazardous materials from the property, (iv) constructing and furnishing a new community room on the property, (v) installing a new HVAC system on the property, (vi) installing new roofs on each of the property apartment buildings, (vii) installing new kitchens, bathrooms and energy-efficient windows in each of the property apartment units, (viii) repairing and repainting masonry on the property, (ix) adding bump-out additions to increase the number of family sized units on the property, and (x) incorporating green building features to meet Earthcraft standards . It is anticipated that comprehensive renovation of Howard Manor Apartments will be completed by the fall of 2013, at which time sixty-nine (69) of the units will be designated as income-restricted units and will be reserved for occupancy by low-income and very low-income households until December 31, 2072. The remaining seven units will be available to current residents, whose incomes are above 60% of area median income (**AMI**), but would like to continue to reside at Howard Manor Apartments. However, once those current residents move out of their respective non-income restricted units, Howard Manor, LLC will also designate those units as income restricted units for households whose incomes are at or below 60% of AMI.

In order to finance the comprehensive renovation of Howard Manor Apartments, Howard Manor, LLC has secured financing commitments from the Virginia Housing Development Authority (**VHDA**) for a construction to permanent loan of up to $5,900,000 and from Capital One, National Association (**CONA**) for an interim construction loan of approximately $4,600,000. Both VHDA and CONA, as a condition of their respective financing commitments to Howard Manor, LLC, are requiring that the County Board subordinate its $6,380,000 AHIF loan to their respective loans In addition, Hudson Howard Manor LLC, a Delaware limited liability company affiliated with CONA (**Investment Member**) has agreed to provide Howard Manor, LLC with a total equity capital contribution of approximately $9,900,000, which will be provided in installments during the comprehensive renovation of Howard Manor Apartments. A portion of the Investment Member's equity capital contribution will be used to pay off CONA's interim construction loan prior to the completion of the comprehensive renovation.

DISCUSSION: The proposed Amended and Restated AHIF Loan Agreement is attached to this report as Exhibit A). Some of the pertinent provisions of the Amended and Restated Loan Agreement are as follows:

- Howard Manor, LLC will pay all outstanding principal and interest due and owing on LIIF's $3,750,000 loan and ensure that LIIF records an applicable deed of release in the Arlington County, Virginia land records.

- Howard Manor, LLC will borrow up to $5,900,000 from VHDA and approximately $4,600,000 from CONA and the County Board will agree to subordinate its $6,380,000 AHIF loan to each of the VHDA and CONA loans respectively.

- Howard Manor, LLC will withdraw CPDC affiliate, Community Housing, Inc., as an investment member, and add Hudson Howard Manor LLC as a new investment member and Hudson SLP LLC as a special member.

- Beginning on or before June 1, 2015, and until CPDC's ownership affiliate's deferred developer fee of approximately $850,000 is paid in full, but in no event later than June 1, 2024, Howard Manor, LLC will pay twenty five percent (25%) of the

Residual Receipts from the operation of Howard Manor Apartments from the previous calendar year to the County Board in arrears as an annual payment on the outstanding principal and accrued interest on the County Board's $6,380,000 AHIF loan to Howard Manor, LLC. This payment will occur no later than June 1st of each subsequent year.

- Beginning when CPDC's ownership affiliate's deferred developer fee of approximately $850,000 is paid in full, but in no event later than June 1, 2025, Howard Manor, LLC will pay fifty percent (50%) of the residual receipts from the operation of Howard Manor Apartments from the previous calendar year to the County Board in arrears as an annual payment on the outstanding principal and accrued interest on the County Board's $6,380,000 AHIF loan to Howard Manor, LLC. This payment will occur no later than June 1st of each subsequent year during the term of the AHIF loan.

- Residual Receipts generally means for each budget year during the term of the <u>$6,380,000 AHIF loan to Howard Manor, LLC, the amount by which gross revenues from the operation and leasing of Howard Manor Apartments exceeds the sum of (a) operating expenses approved by the County, (b) senior debt payments to VHDA and CONA, and (c) payments into the Replacement Reserve.</u>

- Until December 31, 2072, if Howard Manor, LLC receives a bona fide offer to purchase Howard Manor Apartments, the County Board will have a right of first refusal to purchase the Howard Manor Apartments at either the then fair market value price or the "minimum purchase price" as defined in Section 42(i)(7)(B) of the Internal Revenue Code, as applicable.

FISCAL IMPACT: There is no fiscal impact since there are not any additional funds being approved.

Exhibit A

<u>Amended and Restated AHIF Loan Agreement between the County Board and Howard Manor, LLC</u>

ARLINGTON COUNTY, VIRGINIA

AMENDED AND RESTATED AFFORDABLE HOUSING INVESTMENT FUND LOAN AGREEMENT

HOWARD MANOR APARTMENTS

This **AMENDED AND RESTATED AFFORDABLE HOUSING INVESTMENT FUND 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 Attorney, its County Manager, the Director of the CPHD Housing Division, and the CPHD Housing Division Development Coordinators (the "**County Staff**") and **HOWARD MANOR, LLC**, a Virginia limited liability company (the "**Borrower**") (the County Board and the Borrower each a "**Party**" and collectively the "**Parties**").

RECITALS

WHEREAS, the County Board established its Affordable Housing Investment Fund ("**AHIF Program**") for the purpose of providing funds for affordable housing developments and programs that contribute to the delivery of housing services for low and moderate income households within Arlington County, Virginia; and

WHEREAS, the Community Preservation and Development Corporation ("**CPDC**") and Community Housing, Inc., an ownership affiliate of CPDC ("**CHI**"), were both formed and organized as Maryland non-stock corporations for the purpose of preserving financially sound, socially responsible, affordable housing for low and moderate income individuals and families in the Mid-Atlantic region and offering a range of supportive services for the children, adults, seniors, and disabled individuals that strengthen communities and increase opportunities for growth; and

WHEREAS, on January 13, 2011, CPDC Howard Manor LLC, a Virginia limited liability company whose sole and managing member is CHI, executed and filed the Articles of Organization for the Borrower ("**Articles of Organization**") with the Secretary of the Commonwealth of Virginia and formed and organized the Borrower as a Virginia limited liability company for the sole purpose of acquiring, renovating and operating a 76 unit apartment complex, consisting of three (3) colonial revival style walk-up garden apartment buildings located at 2500-2510 20th Road North and 2001- 2003 North Cleveland Street, between Lee Highway and I-66 in Arlington County, Virginia – RPC Numbers 15-007-066 and 15-007-067 (the "**Property**" or "**Howard Manor Apartments**"), as more particularly described in **Exhibit A**; and

WHEREAS, on February 15, 2011, the County Board authorized the allocation of up to $6,380,000 in AHIF Program funds to CPDC, or its designated County-approved ownership affiliate, to assist with the costs associated with the acquisition and rehabilitation of Howard Manor Apartments; and

WHEREAS, on March 1, 2011, CPDC Howard Manor LLC, as the managing member of the Borrower (the "**Managing Member**") and CHI, as the initial investment member of the Borrower, executed the Borrower's initial operating agreement (the "**Initial Operating Agreement**"); and

WHEREAS, on July 28, 2011, the County Board and the Borrower executed and entered into certain loan documents, including an Affordable Housing Investment Fund Loan Agreement (the "**Acquisition Phase AHIF Loan Agreement**"), a Promissory Note (the "**Acquisition Phase Promissory Note**"), a Deed of Trust, Assignment of Rents and Leases and Security Agreement (the "**Acquisition Phase Deed of Trust**"), and a Declaration of Restrictive Covenants, Conditions and Restrictions (the "**Acquisition Phase Borrower Declarations**" and together with the Acquisition Phase AHIF Loan Agreement, the Acquisition Phase Promissory Note, and the Acquisition Phase Deed of Trust, the "**Acquisition Phase AHIF Loan Documents**") in order for the County Board to provide a subordinated residual receipts loan of $6,380,000.00 in AHIF Program funds (the "**AHIF Acquisition Loan**") to the Borrower to assist with the acquisition and rehabilitation of the Howard Manor Apartments; and

WHEREAS, on July 28, 2011, pursuant to certain loan documents, Low Income Investment Fund, a California nonprofit public benefit corporation (the "**Acquisition Phase Senior Lender**") provided the Borrower with a loan of $3,750,000 (the "**Acquisition Phase Senior Debt**") in order to provide interim financing to assist the Borrower with acquiring the Property for a total acquisition cost of $10,455,000; and

WHEREAS, pursuant to the Acquisition Phase Loan Documents, the County Board agreed to subordinate the AHIF Acquisition Loan to the Acquisition Phase Senior Debt; and

WHEREAS, on June ___, 2012, the Managing Member, Hudson SLP LLC, a Delaware limited liability company, as a special member of the Borrower (the "**Special Member**"), and Hudson Howard Manor LLC, a Delaware limited liability company, as the investment member of the Borrower (the "**Investment Member**" and together with the Special Member, the "**Investor Members**") amended and restated the Initial Operating Agreement (the "**Amended and Restated Operating Agreement**") in order to, among other things, withdraw CHI as an investment member of the Borrower and admit the Investor Members; and

WHEREAS, the Borrower will undertake and direct a comprehensive renovation of the Howard Manor Apartments (the "**Renovation Project**"), which shall include, but not be limited to, (i) updating the Property's electrical mechanical and plumbing systems, (ii) repairing the Property's sidewalks and re-grading the Property's parking lots, (iii) removing and abating any and all hazardous materials from the Property, (iv) constructing and furnishing a new community room on the Property, (v) installing a new HVAC system on the Property, (vi) installing new roofs on each of the Property apartment buildings, (vii) installing new kitchens, bathrooms and energy-efficient windows in each of the Property apartment units, (viii) repairing and repainting masonry on the Property, (ix) adding bump-out additions to increase the number of family sized units on the Property, and (x) incorporating green building features to meet Earthcraft standards; and

WHEREAS, the total costs associated with completion of the Renovation Project will be $15,105,842 and will be permanently financed with (i) up to a $2,400,000 mortgage loan from the Virginia Housing Development Authority ("**VHDA**") under its standard multi-family mortgage loan program ("**VHDA Standard Program Loan**"); (ii) up to a $1,500,000 mortgage loan from VHDA under its REACH-SPARC program ("**VHDA SPARC Program Loan**"); (iii) up to a $2,000,000 mortgage loan from VHDA under its REACH SP-LMATCH program ("**VHDA SP-LMATCH Program Loan**" and together with the VHDA Standard Program Loan and VHDA SPARC Program Loan, the "**VHDA Renovation Debt**"); (iv) a total equity capital contribution to the Borrower from the Investment Member of $9,899,082; (v) CHI's deferred development fee of up to $828,248 (the "**CHI's Deferred Development Fee**"); and (vi) $100,000 in equity from CPDC Howard Manor LLC as a capital contribution to the Borrower; and

WHEREAS, on June ___, 2012, pursuant to certain loan documents, Capital One, National Association (the "**CONA**") provided the Borrower with a construction bridge loan of $4,506,940 (the "**CONA Renovation Debt**") in order to provide interim financing to assist with the costs associated with the Renovation Project; and

WHEREAS, on June ___, 2012, pursuant to the closing on the VHDA Renovation Debt and the CONA Renovation Debt, the Borrower paid off the Acquisition Phase Senior Debt and the Acquisition Phase Senior Lender recorded or soon thereafter will record an applicable deed of release in the land records of Arlington County, Virginia; and

WHEREAS, pursuant to the terms approved by the County Board on February 15, 2011, and June ___, 2012, the County Board agreed to subordinate its AHIF Acquisition Loan to (a) the interim CONA Renovation Debt pursuant to the terms of this Agreement and that certain Subordination and Intercreditor Agreement, dated as of June ___, 2012, by and among the County Board, the Borrower and CONA (the "**Capital One Subordination Agreement**"), and (b) the VHDA Renovation Debt pursuant to the terms of this Agreement and that certain Option Agreement RE Senior Loan by and among the County Board, the Borrower, CONA and VHDA (the "**VHDA Option Agreement**"); and

WHEREAS, in order to further facilitate completion of the anticipated Renovation Project and to ensure the utilization of the Property for occupancy by Low-Income Households and Very Low-Income Households pursuant to the terms approved by the County Board on February 15, 2011 and June ___, 2012, the County Board and the Borrower agree to amend and restate the Acquisition Phase AHIF Loan Agreement, which this Agreement is intended to hereby amend and restate in its entirety, and the Acquisition Phase Promissory Note (the "**Amended and Restated Promissory Note**"), in substantially the form attached hereto as **Exhibit B**; and

WHEREAS, the obligations of the Borrower under this Agreement, the Amended and Restated Promissory Note, and all other documents delivered to the County Board by or on behalf of the Borrower with respect to the AHIF Acquisition Loan are secured by an amended and restated Acquisition Phase Deed of Trust (the "**Amended and Restated Deed of Trust**") conveying the Borrower's interest in the Property as security for the AHIF Acquisition Loan, in substantially the form attached hereto as **Exhibit C**, and an amended and restated Acquisition

Phase Borrower Declarations (the "**Amended and Restated Borrower Declarations**") containing covenants, conditions and restrictions regarding the ownership, operation, use, rent and occupancy of Howard Manor Apartments during the Affordability Compliance Period (as defined below), in substantially the form attached hereto as **Exhibit D**, each dated as of the Effective Date, from the Borrower for the benefit of the County Board, and recorded in the Clerk's office of the Circuit Court of Arlington County, Virginia.

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the covenants, warranties 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.:

"*Actual Household Size*" means the actual number of persons in the applicable household.

"*Affordability Compliance Period*" means the period of time from the Effective Date through December 31, 2072, during which time the Borrower covenants and agrees for itself, its successors or its assigns to comply with each restriction and covenant set forth in the Amended and Restated Borrower Declarations and Article IV of this Agreement.

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

"*Annual Budget*" means the Borrower's final and comprehensive annual budget for the Howard Manor Apartments complex for each Budget Year, which shall include the projected Gross Revenue, Senior Debt Service Payments, Approved Operating Expenses, Replacement Reserve payments, and Residual Receipts. The Borrower shall submit the Annual Budget to the County Staff for review and approval on or before each November 1st during the Term and, subject to revisions by the County Staff, the County Manager shall approve the Annual Budget in writing no later than thirty (30) days prior to the start of the Borrower's new Budget Year. In the event that the County Manager does not approve the Annual Budget before each December 1st during the Term, the Borrower shall continue to use the previously approved Annual Budget from the prior year with all items increased by increases in the CPI Percentage until a new Annual Budget is approved in writing by the County Manager.

"*Approved Operating Expenses*" means for each Budget Year during the Term hereof, commencing __________, 20___, the following operating expenses reasonably and actually incurred from the operation and maintenance of the Howard Manor Apartments complex to the extent that such operating expenses are consistent with the Borrower's Annual Budget and the Borrower's annual independent audit performed by a certified public accountant using generally accepted accounting principles:

(a) **reasonable payroll fees and expenses** (including salaries and benefits) in amounts in accordance with industry standards for similar affordable residential projects; and if such payroll fees and expenses exceed the amount budgeted in the Annual Budget by more than five percent (5%), then such payroll fees and expenses that exceed the amount budgeted in the Annual Budget by more than five percent (5%) must be specifically approved in writing by the County Staff before such fees and expenses are included in the Approved Operating Expenses used to calculate the Residual Receipts;

(b) **reasonable Property Management Fee** in amounts in accordance with industry standards for similar affordable residential projects; and if such Property Management Fee exceed the amount budgeted in the Annual Budget by more than five percent (5%), then such Property Management Fee that exceed the amount budgeted in the Annual Budget by more than five percent (5%) must be specifically approved in writing by the County Staff before such Property Management Fee is included in the Approved Operating Expenses used to calculate the Residual Receipts;

(c) **reasonable administrative fees and expenses** (excluding the Asset Management Fee or any other management fees) in amounts in accordance with industry standards for similar affordable residential projects, including, but not limited to, reasonable costs associated with accounting and tax preparation fees, advertising and marketing expenses, and legal fees incurred by the Borrower in the ordinary course of business related to the operation of the Howard Manor Apartments complex; and if such administrative fees and expenses exceed the amount budgeted in the Annual Budget by more than five percent (5%), then such administrative fees and expenses that exceed the amount budgeted in the Annual Budget by more than five percent (5%) must be specifically approved in writing by the County Staff before such fees and expenses are included in the Approved Operating Expenses used to calculate the Residual Receipts;

(d) **reasonable Asset Management Fee** in an amount in accordance with industry standards for similar affordable residential projects; and if such Asset Management Fee exceeds the amount budgeted in the Annual Budget, then such Asset Management Fee that exceeds the amount budgeted in the Annual Budget must be specifically approved in writing by the County Staff before such Asset Management Fee is included in the Approved Operating Expenses used to calculate the Residual Receipts;

(e) **reasonable gas, electric, water and sewer, and other utility service fees and expenses** not paid for directly or indirectly by Tenants;

(f) **reasonable operation and maintenance fees and expenses** in an amount in accordance with industry standards for similar affordable residential projects; and if operation and maintenance fees and expenses exceed the amount budgeted in the Annual Budget by more than five percent (5%), then such operation and maintenance fees and expenses that exceed the amount budgeted in the Annual Budget by more than five percent (5%) must be specifically approved in writing by the County Staff before such operation and maintenance fees and expenses are included in the Approved Operating Expenses used to calculate the Residual Receipts;

(g) taxes (excluding real estate taxes) and reasonable insurance fees and expenses in amounts in accordance with industry standards for similar affordable residential projects; and if such insurance fees and expenses exceed the amount budgeted in the Annual Budget by more than five percent (5%), then such insurance fees and expenses that exceed the amount budgeted in the Annual Budget by more than five percent (5%) must be specifically approved in writing by the County Staff before such fees and expenses are included in the Approved Operating Expenses used to calculate the Residual Receipts;

(h) real estate taxes and assessments or payments in lieu thereof; and

Any costs and expenses incurred by the Borrower, including, but not limited to, payments made to affiliates, that is not included in the definition of Approved Operating Expenses set forth above shall not be included in the Approved Operating Expenses used to calculate the Residual Receipts.

"Area Median Income" or ***"AMI"*** means the median income for the Washington, DC metropolitan statistical area, adjusted for Actual Household Size, as published from time to time by the U.S. Department of Housing and Development ("HUD") pursuant to Section 8 of the United States Housing Act of 1937.

"Asset Management Fee" means the fee paid to the Special Member or such other third party, commencing in the year that the Renovation Project is completed and limited to $5,000 in such year, and such Asset Management Fee shall be adjusted annually thereafter by a percentage equal to the change in the Consumer Price Index in effect on the date of adjustment over the date in effect twelve (12) months prior thereto.

"Budget Year" means each period of January 1 to and including December 31, commencing January 1, 2013.

"Consumer Price Index" means the revised Consumer Price Index for Urban Wage Earners and Clerical Workers for the geographic area that includes the Howard Manor Apartments (all items, 1982-4 = 100) promulgated by the Bureau of Labor Statistics of the United States Department of Labor.

"CPI Percentage" means the percentage equal to the difference between the Consumer Price Index most recently published as of the first day of the year in question, and the Consumer Price Index for the year 2012.

"County Affordability Level" means the percentage of Area Median Income (calculated using average family size) at which a unit rent paid by a Tenant would be affordable to a household earning up to 60% or up to 50%, as applicable, of the Area Median Income. For this purpose, affordable rents shall be based on family size and shall be calculated using an occupancy factor of 1 person for efficiency, 1.5 persons for 1-bedroom, 3 persons for 2-bedroom and 4.5 persons for 3-bedroom apartments, or as otherwise provided for in Article IV of this

Agreement. Notwithstanding the foregoing definition, the Borrower understands that the affordable rents may be annually adjusted on the basis of VHDA/Low Income Housing Tax Credit rent limits set for Arlington County. Contract rents shall not exceed the established affordability level for the gross rents, as published by HUD, minus a utility allowance (if applicable) as per the Utility Allowance. Rent increases for Tenants continuing in occupancy shall be based on area median income increases as published by HUD.

"*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.

"*Gross Revenue*" means for each Budget Year during the Term hereof, all revenue, income, receipts and other consideration actually received by Borrower from the operation and leasing of the Howard Manor Apartments from the previous Budget Year, to the extent that such Gross Revenue is consistent with the Borrower's annual independent audit performed by a certified public accountant using generally accepted accounting principles. Gross Revenue shall include, but not be limited to: (a) all rents, fees and charges paid by Tenants; (b) Section 8 payments or other rental subsidy payments received for the dwelling units; (c) deposits forfeited by Tenants; (e) all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; (f) proceeds from vending and laundry room machines; (g) the proceeds of business interruption or similar insurance; (h) the proceeds of casualty insurance not required to be paid to the holders of the VHDA Renovation Debt, the CONA Renovation Debt or reinvested (provided however, expenditure of such proceeds for repair or restoration of the Howard Manor Apartments complex shall be included within Approved Operating Expenses in the year of the expenditure); (i) condemnation awards for a taking of part or all of the Property or the improvements for a temporary period not required to be paid to the holders of the VHDA Renovation Debt, the CONA Renovation Debt or reinvested; and (j) the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the Property. Gross Revenue shall also include any release of funds from Replacement Reserve and other reserve accounts to Borrower. Gross Revenue shall not include Tenant security deposits, loan proceeds, capital contributions or similar advances.

"*Income-Restricted Unit*" means as of the Effective Date each of the sixty-eight (68) apartment units in the Howard Manor Apartments complex and upon completion of the Renovation Project each of the sixty-nine (69) apartment units in the Howard Manor Apartments complex that are reserved for occupancy by a Low-Income Household or a Very Low-Income Household pursuant to Article IV of this Agreement and the Amended and Restated Borrower Declarations.

"*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.

"*Property Management Fee*" means the reasonable fees and expenses set forth in that certain Housing Management Agreement, dated June __, 2012, by and between the Borrower and CHI Management, LLC, a ______________ limited liability company, the property manager of Howard Manor Apartments. Upon termination of the Housing Management Agreement or the removal of CHI Management, LLC as the property manager of Howard Manor Apartments, the Borrower must obtain the County Manager's prior written approval of any new property manager before additional Property Management Fees are included in the Approved Operating Expenses used to calculate the Residual Receipts.

"Replacement Reserve" means the payment amount of $300 per unit per year, increasing annually by the CPI Percentage, beginning ___________, 20___. The Borrower shall utilize amounts in the Replacement Reserve to fund major repair, capital expenditures and replacement of capital items on the Howard Manor Apartments. The Replacement Reserve shall be deposited in an interest-bearing bank account. Interest earned on the Replacement Reserve shall be added to the Replacement Reserve.

"Residual Receipts" means for each Budget Year during the Term hereof, the amount by which Gross Revenues exceeds the sum of (a) Approved Operating Expenses, (b) Senior Debt Service Payments, and (c) payments to the Replacement Reserve. Residual Receipts shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing.

"Senior Debt Service Payments" means for each Budget Year during the Term hereof, the annual CONA Renovation Debt payments currently due and owing to CONA, the VHDA Renovation Debt payments currently due and owing to VHDA, and any other debt payments due and owing, which have been approved by the County Board, senior to the AHIF Acquisition Loan, to the extent that such Senior Debt Service Payments are consistent with the Borrower's Annual Budget and the Borrower's annual independent audit performed by a certified public accountant using generally accepted accounting principles. To the extent that the Senior Debt Service Payments exceed the amount budgeted in the Annual Budget, such excess Senior Debt Service Payments shall not be included in the Approved Operating Expenses used to calculate the Residual Receipts.

"Tenant" means a household occupying an Income-Restricted Unit.

"Tenant Relocation Plan" means the plan reviewed and approved by Arlington County Board appointed Tenant-Landlord Commission on July 20, 2011 to provide moving assistance to all 76 existing households to temporary or permanent units including payments transfer of utilities, which Tenant Relocation Plan is attached as **Exhibit E**.

"Utility Allowance" means the applicable utility allowances for the unit type using the current Arlington County Section 8 Program Allowances for Tenant Furnished Utilities and Other Services, as set forth in **Exhibit F** or as otherwise permitted by applicable federal regulations and approved by the County Staff.

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

<u>Section 1.04. Exhibits</u>. 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	Property Description
Exhibit B	Form of Amended and Restated Promissory Note
Exhibit C	Form of Amended and Restated Deed of Trust
Exhibit D	Form of Amended and Restated Borrower Declarations
Exhibit E	Tenant Relocation Plan
Exhibit F	Utility Allowance
Exhibit G	Scope of Work
Exhibit H	Income Certification for Income Restricted Units
Exhibit I	Annual Rental Occupancy Affidavit
Exhibit J	Income-Restricted Unit Occupancy Report
Exhibit K	Affirmative Marketing Plan
Exhibit L	Renovation Project Budget and Operating Pro Forma

ARTICLE II
LOAN PROVISIONS

Section 2.01. AHIF Acquisition Loan. In reliance upon the Borrower's representations, warranties and covenants in the Acquisition Phase AHIF Loan Documents, as amended and restated, the County loaned Six-Million Three-Hundred Eighty Thousand and 00/100 Dollars ($6,380,000) of AHIF Program funds to the Borrower, subject to the terms and conditions of this Agreement and the other Amended and Restated AHIF Loan Documents.

Section 2.02. Term of the AHIF Acquisition Loan. Subject to the Affordability Compliance Period, the AHIF Acquisition Loan and this Agreement shall have a term (the "**Term**") that expires on the date that is thirty-five (35) years after the Effective Date.

Section 2.03. Interest on the AHIF Acquisition Loan; Default Rate.

(a) As further set forth in the Amended and Restated Promissory Note, and subject to the provisions of Section 2.03(b) below, the unpaid principal balance of the AHIF Acquisition Loan shall accrue interest at the below market rate of two percent (2%) per annum on the outstanding amount, accruing immediately upon execution of this Agreement and compounded annually as called for in the Amended and Restated Promissory Note.

(b) If there is an Event of a Default by the Borrower, interest on the AHIF Acquisition 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 AHIF Acquisition Loan has been repaid in full to the County 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 AHIF Acquisition Loan, as evidenced by the Amended and Restated Promissory Note, is secured by the Amended and Restated Deed of Trust and the Amended and Restated Borrower Declarations, both of which are recorded as liens against the Property, junior in lien priority only to the deeds of trust securing the CONA Renovation Debt and the VHDA Renovation Debt.

Section 2.05. Repayment of the AHIF Acquisition Loan.

(a) Annual Payments. As set forth in the Amended and Restated Promissory Note, the Borrower shall repay the outstanding principal amount of the AHIF Acquisition Loan of $6,380,000.00, plus accrued interest, in annual payments beginning June 1, 2015 ("**Annual Payments**") from the disbursement of Residual Receipts pursuant to Section 2.05(b) below. Annual Payments from the disbursement of Residual Receipts shall be due and payable to the County in arrears no later than June 1st of each year with respect to the Residual Receipts from the previous calendar year. If there are no Residual Receipts available for disbursement pursuant to Section 2.05(b) below, the Borrower shall provide the County Board with a certificate which certifies that there are no Residual Receipts available for disbursement ("**Residual Receipts Certificate**"). Notwithstanding anything in this Agreement to the contrary, the County Manager shall apply Annual Payments made by the Borrower in connection with the AHIF Acquisition Loan first to accrued but unpaid interest and then to principal. Any such Annual Payments shall have no effect upon the Borrower's obligations and covenants under Article IV of this Agreement which shall survive for the full term of the Affordability Compliance Period.

(b) Residual Receipts

(1) Disbursement and Use of Residual Receipts. The Residual Receipts shall be disbursed and used as follows:

i. Beginning the Effective Date and ending December 31, 2013, the Borrower shall be entitled to retain one hundred percent (100%) of the Residual Receipts.

ii. Beginning June 1, 2015:

A. twenty-five percent (25%) of the Residual Receipts from the previous calendar year shall be paid by the Borrower to the County Board in arrears as an Annual Payment on the outstanding principal and accrued interest on the AHIF Acquisition Loan. Thereafter, no later than June 1st of each subsequent year and ending the year in which CHI's Deferred Development Fee is fully paid-off, but in no event later than June 1, 2024, twenty-five percent (25%) of the Residual Receipts from the previous calendar year shall be paid by the Borrower to the County Board in arrears as Annual Payments on the outstanding principal and accrued interest on the AHIF Acquisition Loan; and

B. once the Borrower has disbursed twenty-five percent (25%) of the Residual Receipts to the County Board pursuant to Section 2.05(b)(1)(ii)(A), the Borrower shall be entitled to retain the remaining seventy-five percent (75%) of the Residual Receipts. Once all of CHI's Deferred Development Fee has been paid in full by the Borrower, but in no event later than June 1, 2024, then fifty percent (50%) of any remaining Residual Receipts for the calendar year in which CHI's Deferred Development Fee is paid off shall be disbursed to the County Board by June 1st of the following calendar year.

iii. Beginning June 1st of the first year following payoff of CHI's Deferred Development Fee, but in no event later than June 1, 2025:

A. fifty percent (50%) of the Residual Receipts from the previous calendar year shall be paid by the Borrower to the County Board in arrears as an Annual Payment on the outstanding principal and accrued interest on the AHIF Acquisition Loan. Thereafter, no later than June 1st of each subsequent year during the Term of this Agreement, fifty percent (50%) of the Residual Receipts from the previous calendar year shall be paid by the Borrower to the County Board in arrears as Annual Payments on the outstanding principal and accrued interest on the AHIF Acquisition Loan; and

B. once the Borrower has disbursed fifty percent (50%) of the Residual Receipts to the County Board pursuant to Section 2.05(b)(1)(iii)(A), the Borrower shall be entitled to retain the remaining fifty percent (50%) of the Residual Receipts.

iv. Once all of the outstanding principal and interest on the AHIF Acquisition Loan have been paid in full, the Borrower shall be entitled to retain one hundred percent (100%) of the Residual Receipts.

(2) Reports and Accounting of Residual Receipts.

i. Audited Financial Statement. All Annual Payments made by the Borrower to the County Board and all Residual Receipts Certificates shall be accompanied by an audited statement duly certified by an independent firm of certified public accountants that are nationally recognized, setting forth in reasonable detail the computation and total amount of all Residual Receipts during the preceding calendar year or the computation detailing that there were no Residual Receipts during the preceding calendar year.

ii. Books and Records. The Borrower shall keep and maintain on the Property or at its principal place of business, or elsewhere with the County Manager's written consent, full, materially complete and appropriate books, records and accounts relating to the Howard Manor Apartments complex, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by County Staff, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open to inspection by the County Staff, its auditors or other authorized representatives at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection 2.05(b)(2)(iii) below then pending.

iii. County Audits. The receipt by the County Staff of any audited statement pursuant to subsection 2.05(b)(2)(i) above or acceptance by the County Staff of any loan repayment for any period shall not bind the County Staff as to the correctness of such audited statement or such payment. Within five (5) years after the receipt of any such audited statement by an accounting firm selected by the Borrower, the County Staff or any designated agent or employee of the County Board at any time and upon forty-eight (48) hours advance notice shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of the Borrower and other places where the applicable records are kept. If it is determined as a result of such audit that there has been a deficiency in an Annual Payment to the County Board, then such deficiency shall become immediately due and payable with interest at the Default Rate, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than ten percent (10%) and by at least Five Thousand Dollars ($5,000), then Borrower shall pay, in addition to the interest charges referenced hereinabove, all of the County Staff's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

iv. Maximization of Residual Receipts. Borrower shall, at all times during the Term, continue its operations of the Howard Manor Apartments complex and to use its skills and diligence to produce the maximum Residual Receipts, subject to the rent and occupancy requirements of this Agreement and the Amended and Restated Borrower Declarations, as well as legal restrictions of nonprofit affordable housing owners imposed by the federal government; provided, however, that the Borrower shall not be required to displace Tenants in order to maximize Residual Receipts. In addition, the Borrower agrees that prior to funding any unanticipated capital expenses from capital reserves or making any other "material changes" to the Annual Budget, the Borrower shall submit to the County Manager, for the County Manager's review and prior written approval, a description and the cost of such unanticipated capital expense or other "material change" to the Annual Budget. If the Borrower is required to fund an unanticipated capital expense or make any other "material changes" to the Annual Budget due to an emergency repair where the lives or property of Tenants are at immediate risk, then the Borrower shall be required to notify the County Manager as soon as practical thereafter, not to exceed five (5) business days, in lieu of seeking the County Manager's written pre-approval. As used herein, "material change" shall mean (i) any one or more item having an aggregate cost of more than $10,000, or (ii) any one or more item which costs more than 50% of the value of the original line item (allowing for an increase in such value by the CPI Percentage) for which the change is made.

(c) Payment in Full. Notwithstanding any other provision to the contrary, and regardless of whether or not Annual Payments made or Residual Receipts realized by the Borrower for any period of time is adequate to repay the AHIF Acquisition Loan, all outstanding principal and accrued interest on the AHIF Acquisition Loan, together with any other sums evidenced by the Amended and Restated Promissory Note or secured by the Amended and Restated Deed of Trust and/or any other Amended and Restated AHIF Loan Documents, as well as any future advances that may be made to the Borrower by the County Board, shall be immediately due and payable in full by the Borrower upon the earlier of:

(1) July 1, 2047; or

(2) the occurrence of an Event of Default for which the County Board exercises its right to cause the AHIF Acquisition Loan indebtedness to become immediately due and payable, or for which the AHIF Acquisition Loan indebtedness is automatically specified to become immediately due and payable pursuant to applicable subsections of this Agreement; or

(3) a Transfer that is not permitted or approved by the County Board, as provided in Section 5.03 of this Agreement.

(d) Prepayments. The Borrower shall have the right to prepay the AHIF Acquisition Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon the Borrower's obligations and covenants under Article IV of this Agreement which shall survive for the full term of the Affordability Compliance Period.

(e) Payments. All payments (including Annual Payments and prepayments) made by the Borrower under this Agreement and under the Amended and Restated Promissory Note, whether on account of principal, interest or otherwise, shall be made without set-off or counterclaim and shall be made on or before the due date thereof in U.S. dollars to the County Board at:

Arlington County Department of
Community Planning, Housing, and Development
2100 Clarendon Boulevard, Suite 700
Arlington, Virginia 22201
Attention: Housing Director

or by wire transfer as arranged by County Staff.

Section 2.06. Conditions to Closing. The County Board's obligations hereunder shall be subject to the Borrower's obligations hereunder and the following additional conditions at or as soon as practicable after the Effective Date:

(a) Receipt by the County Attorney of a the Amended and Restated Operating Agreement executed by the Managing Member, Special Member, Investor Member, and CHI.

(b) Receipt by the County Attorney of all executed loan documents related to the CONA Renovation Debt.

(c) Receipt by the County Attorney of all executed loan documents related to the VHDA Renovation Debt.

(d) Receipts evidencing the proper recording of the Amended and Restated Deed of Trust and Amended and Restated Borrower Declarations in all places as shall be necessary to perfect the security interests granted in the Amended and Restated Deed of Trust.

(e) Receipt evidencing the proper recording of the applicable deed of release by the Acquisition Phase Senior Lender.

The County Board reserves the right to waive any of the conditions to its obligations contained in this Agreement.

Section 2.07. Permissible Uses of the AHIF Acquisition Loan Funds – Building Reserve Fund.

(a) Pursuant to the terms of the Acquisition Phase AHIF Loan Agreement, the Borrower agreed to use the AHIF Acquisition Loan funds solely to defray such costs and expenses related to the acquisition and renovation of the Property and to fund a building reserve in an amount not to exceed $200,000 (the "**Building Reserve Fund**").

(b) The purpose of the Building Reserve Fund is to pay for the direct costs of the Renovation Project.

(c) Subject to Section 3.15 of this Agreement, any unspent AHIF Acquisition Loan funds shall be returned to the County.

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

Section 2.08. Subordination of AHIF Acquisition Loan. The County Board hereby agrees to subordinate the AHIF Acquisition Loan to the interim CONA Renovation Debt by executing the Capital One Subordination Agreement and the permanent VHDA Renovation Debt by executing the VHDA Option Agreement. The Capital One Subordination Agreement and the VHDA Option Agreement shall each set forth the respective rights and obligations with respect to the parties thereunder, and the Capital One Subordination Agreement shall be recorded in the land records of Arlington County, Virginia.

Section 2.09. Intentionally Omitted.

Section 2.10. Nonrecourse. The Parties agree that except as expressly provided in Section 3(i) of the Amended and Restated Promissory Note, the Amended and Restated Promissory Note shall be non-recourse to the Borrower.

ARTICLE III
RENOVATION OF PROPERTY

Section 3.01. Scope of Renovation. The Borrower represents and warrants that the scope of the Renovation Project shall be in substantial conformance with the Scope of Work approved by the County Staff, which is attached hereto as **Exhibit G**, and incorporated herein by reference. The Borrower shall notify the County Staff in a timely manner of any substantial changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the Scope of Work approved by the County Staff.

Section 3.02. Renovation Responsibilities.

(a) It shall be the responsibility of the Borrower to coordinate and schedule the Scope of Work so that commencement and completion of the Renovation Project shall take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Renovation Project, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of the renovation work and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and project manager. Any review or inspection undertaken by the County Staff with reference to this Agreement is solely for the purpose of determining whether the Borrower is properly discharging its obligations to the County Board under this Agreement, and may not be relied upon by Borrower or by an third parties as a warranty or representation by the County as to the quality of the design, construction or renovation of the Property.

Section 3.03. Commencement of Renovation. Borrower shall cause the commencement of the Renovation Project no later than __________, 2012.

Section 3.04. Completion of Renovation. Borrower shall diligently pursue completion of the Renovation Project and shall cause completion of the Renovation Project by no later than December 31, 2013. The Renovation Project shall be considered complete when (a) all improvements are fully constructed and installed and the final Income-Restricted Unit is renovated, (b) all Income-Restricted Units are ready for use and occupancy, and (c) a final inspection certificate has been issued by the County for each of the Property's Income-Restricted Units ("**Final Completion**").

Section 3.05. Cost of Renovation.

(a) Except as provided in this Agreement, the costs associated with the Renovation Project shall be the responsibility of the Borrower.

(b) Concurrently with the execution of this Agreement, the County Board and the Borrower have agreed upon a Renovation Project budget, which is set forth in the Scope of Work, which is attached hereto as **Exhibit G**.

(c) The Borrower hereby acknowledges and agrees that any increase in costs above the amounts set forth in the approved Renovation Project budget, or decreases in interim or permanent financings below the amounts heretofore projected or assumed by the Borrower, which occur subsequent to the execution of this Agreement, shall be at the sole financial risk of the Borrower.

Section 3.06. Intentionally Omitted.

Section 3.07. County and Other Governmental Agency Permits. Borrower acknowledges and agrees that execution of this Agreement by the County Board does not constitute approval for the purpose of the issuance of building permits for the Renovation Project, does not limit in any manner the discretion of the County Manager’s staff in such approval process, and does not relieve the Borrower from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for the Renovation Project, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Renovation Project (if any), and the completion of any required environmental review.

Borrower covenants that it shall: (i) obtain all necessary permits and approvals which may be required by the County Manager’s staff or any other governmental agency having jurisdiction over the Renovation Project or the development of the Property, (ii) comply with all mitigation measures imposed in connection with any environmental review of the Property, and (iii) not commence construction work on the Property prior to issuance of all applicable permits, notices and approvals.

Section 3.08. Fees. Borrower shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of the County in connection with obtaining building permits and other approvals for the Renovation Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, design review, architectural review and any subsequent approvals of the Renovation Project or the development of the Property.

Section 3.09. Intentionally Omitted.

Section 3.10. Local, State, and Federal Laws; Environmental Mitigation Measures. The Borrower shall carry out the Renovation Project in conformity with all applicable laws, including, among other things, all applicable federal and state labor standards, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and any other provision required of any other grant or loan agreement with a public entity. The Borrower shall be responsible for complying with all applicable Arlington County and Commonwealth of Virginia building codes, planning and zoning requirements, and shall take all necessary steps so that the development, renovation, construction, use, operation, and maintenance of the Property shall be in conformity with applicable zoning requirements, and that all applicable environmental mitigation measures and other requirements, if any, pursuant to the National Environmental Policy Act shall have been complied with.

<u>Section 3.11. Progress Reports</u>. Until such time as the Borrower has received a final certificate of occupancy for all of the Income-Restricted Units or its functional equivalent from the County, Borrower shall provide the County Staff with written quarterly progress reports regarding the status of the Renovation Project.

<u>Section 3.12. Inspections</u>. Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Property by the County during reasonable business hours and upon reasonable notice to Borrower for the purpose of determining compliance with this Agreement.

<u>Section 3.13. Insurance Requirements During Renovation</u>. In addition to the insurance coverage required pursuant to Section 5.02 below, prior to commencing the Renovation Project, the Borrower shall maintain coverage of the type now known as builder's completed value risk insurance, as delineated on a Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (A) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (B) a "Replacement Cost Endorsement" in amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by the County Staff, and (C) an endorsement to include coverage for budgeted soft costs (including construction loan interest, building permit fees, construction inspection fees, builder's risk insurance, and property taxes during renovation). The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding $50,000 per occurrence.

<u>Section 3.14. Non-Discrimination</u>.

(a) During the renovation of the Property there shall be no discrimination based on race, color, religion, gender, sexual orientation, marital status, national origin, ancestry, age, familial status, source of income, disability or any other basis prohibited by the County or by federal law, in selection of contractors or contract workers, or the hiring, firing, promoting, or demoting of any person engaged in the renovation work, except where one of these characteristics is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.

(b) The Borrower shall make all required special efforts to notify prospective minority and women owned business enterprises of potential opportunities to provide goods or services to the Borrower under this Agreement.

<u>Section 3.15. Cost Savings</u>. "**Excess Proceeds**" shall mean the sum of all sources of financing received by Borrower for acquisition, renovation, construction, maintenance and permanent financing of the Property and the Renovation Project, less the sum of actual uses as shown on the final cost certificate for the Renovation Project, excluding any deferred developer fees. The County shall receive fifty percent (50%) of Excess Proceeds which shall constitute the cost savings to reduce the principal of the Acquisition AHIF Loan and the remaining fifty percent (50%) shall be remitted to the Borrower and the Borrower shall apply one hundred percent (100%) of the remitted Excess Proceeds toward the payment of CHI's Deferred Development Fee.

ARTICLE IV
AFFORDABLE HOUSING PLAN COVENANTS

Section 4.01. General Covenant. As a material inducement for the County's willingness to enter into this Agreement, and in consideration of the County loaning the AHIF Acquisition Loan funds to the Borrower, the Borrower hereby covenants and agrees for itself, its successors and its assigns, to comply with each restriction and covenant set forth in this Article IV throughout the entire Affordability Compliance Period.

Section 4.02. Occupancy and Affordability Covenants.

(a) Income Eligibility and Occupancy Requirements – As of the Effective Date. Borrower covenants and agrees that as of the Effective Date, at least sixty-eight (68) units in the Howard Manor Apartments complex shall be designated as Income Restricted Units and shall be rented to and occupied by or, if vacant, available for occupancy by Low-Income Households with incomes at or below sixty percent (60%) of the Area Median Income.

(b) Income Eligibility and Occupancy Requirements – Upon Completion of the Renovation Project.

(1) Borrower covenants and agrees that upon completion of the anticipated Renovation Project, at least twenty-three (23) units in the Howard Manor Apartments complex shall be designated as Income Restricted Units and shall be rented to and occupied by or, if vacant, available for occupancy by Very Low-Income Households with incomes at or below fifty percent (50%) of the Area Median Income; and forty-six (46) units in the Howard Manor Apartments shall be designated as Income-Restricted Units and shall be rented to and occupied by or, if vacant, available for occupancy by Low-Income Households with incomes at or below sixty percent (60%) of the Area Median Income, as described in the Amended and Restated Borrower Declarations and as outlined below:

Unit Size	Distribution of Income-Restricted Units	Maximum Household AMI
Efficiency Units	02	Incomes at or below 50% of AMI
Efficiency Units	06	Incomes at or below 60% of AMI
One Bedroom Units	12	Incomes at or below 50% of AMI
One Bedroom Units	24	Incomes at or below 60% of AMI
Two Bedroom Units	09	Incomes at or below 50% of AMI
Two Bedroom Units	16	Incomes at or below 60% of AMI
Total:	69	

(2) Upon completion of the Renovation Project, there will be an additional seven units which will be leased by current residents whose incomes are above sixty-percent (60%) of the AMI. Once those current residents move out of their respective non-Income-Restricted Units, those non-Income-Restricted Units shall only be rented to and occupied by or, if vacant, available for occupancy by Low-Income Households with incomes at or below sixty percent (60%) of the AMI during the Affordability Compliance Period.

(3) If in the event the Borrower after utilizing commercially reasonable efforts is unable to lease an Income-Restricted Unit that is designated for occupancy by a Very Low-Income Household, and such designated Income-Restricted Unit remains vacant for a period of at least forty-five (45) days, then Borrower shall have the right to lease such designated Income-Restricted Unit to a Low-Income Household; provided, however, that when the next exact sized Income-Restricted Unit that is designated for a Low-Income Household becomes available for lease, the Borrower shall use commercially reasonable efforts to lease such available designated Income-Restricted Unit to a Very Low-Income Household, but if after 45 days, such designated Income-Restricted Unit remains vacant, then Borrower shall again have the right to lease such designated Income-Restricted Unit to a Low-Income Household and this will continue until at least the minimum number of Income-Restricted Units that are designated for occupancy by Very Low-Income Households are so leased.

(c) Accessible and Supportive Housing Units. Borrower covenants and agrees that upon completion of the Renovation Project:

(1) the Borrower shall maintain a minimum of at least six (6) of the Income-Restricted Units in the Howard Manor Apartments as Type A units under standards described in the American National Standards Institute "Accessible and Usable Buildings and Facilities" (ICC/ANSI A117.1-2003) as adopted by the Virginia Uniform Statewide Building Code. In addition, the Borrower shall maintain a minimum of at least two (2) of the Income-Restricted Units in the Howard Manor Apartments as accessible to persons with visual and hearing impairments. The Borrower agrees to diligently market these accessible Income-Restricted Units to persons with disabilities according to the Borrower's Affirmative Marketing Plan; and

(2) at least four (4) of the Income-Restricted Units in the Howard Manor Apartments shall be designated as supportive housing units under the County Department of Human Services ("**DHS**") Permanent Supportive Housing ("**PSH**") Program using either federal or local project-based rental assistance funding. The Borrower shall enter into a PSH Agreement, with DHS, as approved by the County Attorney, approximately 90 days prior to issuance of the first certificate of occupancy or its functional equivalent. The units not utilized by DHS shall remain affordable at the established percentage of Area Median Income. The provision of these units shall occur through one of two mechanisms: the Borrower or its affiliate shall (A) use federal Housing Choice Project-based Vouchers or (B) use DHS' Project-based Supportive Housing Rental Assistance Program to subsidize the rents of DHS clients. . Notwithstanding the foregoing, the Borrower's compliance with this Section 4.02(c)(2) shall be contingent upon the Borrower's receipt of such rental assistance funding.

(d) Rental Rate Restrictions.

(1) *Income Restricted Units*. Borrower covenants and agrees that during the term of the Affordability Compliance Period, the rental rates charged of Tenants for all of the Income-Restricted Units in the Howard Manor Apartments complex shall (A) be established in accordance with HUD rent limits set for Arlington County for imputed incomes at sixty percent (60%) AMI and fifty percent (50%) AMI, respectively, as set forth in Section 4.02(b), (B) be indexed for household income and adjusted for family size as described under the

definition of "County Affordability Level," and (C) not exceed the established affordability level for the gross rents, as published by HUD.

(2) *Borrower's Responsibility to Establish Rental Rates*. It shall be the responsibility of the Borrower and not the County Staff to establish rents for the Income-Restricted Units in accordance with this Agreement. Borrower may seek approval of rents for Income-Restricted Units from the County's Housing Division prior to establishing such rents in order to assure that they are not greater than the maximum rents allowed pursuant to this Agreement.

(e) <u>Required Acceptance of Certain Grants and Vouchers</u>. Borrower covenants and agrees that during the term of the Affordability Compliance Period, the Borrower shall accept Arlington County Housing Grants and Section 8 Housing Choice Vouchers as part of the rental payment from qualified households and to suspend any requirement for minimum income for prospective Tenants who are participants in the Arlington County Housing Grants and Section 8 Housing Choice Vouchers programs; provided, however, that the Borrower shall not be required to give preference to such participants over other qualified Income-Restricted Unit households.

(f) <u>Utility Allowance</u>. Borrower covenants and agrees that during the Affordability Compliance Period, to the extent that Tenants pay their own utility charges, the maximum monthly rent shall be reduced by a Utility Allowance, as set forth on **<u>Exhibit F</u>** hereto.

(g) <u>Rental Rate Increases</u>. Borrower covenants and agrees that during the term of the Affordability Compliance Period, rental rates shall be adjusted no more frequently than annually, per the lease agreement. Rent increases may not allow rents paid by Tenants to exceed the rental rate requirements established in Section 4.02(d) above, and shall be based on area median income increases for the household sizes and income levels specified in this Article IV, as published annually by HUD for the Washington, D.C. Metropolitan area. Tenants must be provided a written notice of a minimum of thirty (30) days prior to any increase in their rent schedule.

(h) <u>Appropriate Household Size</u>. Borrower covenants and agrees that during the term of the Affordability Compliance Period, all Tenants shall have a household size appropriate to the size of the apartment unit being leased in Howard Manor Apartments. In determining the number of persons to be placed in an apartment unit, the Borrower shall conform to the guidelines of section 3-23 of the 4350.3 HUD Occupancy Handbook, as amended from time to time.

<u>Section 4.03. Tenants, Income Certification and Reporting</u>.

(a) <u>Tenants</u>

(1) *Tenant Qualification*. Borrower covenants and agrees that at the time of the initial occupancy of an Income-Restricted Unit by a qualified Tenant, the Borrower shall have established that each household that leases an Income-Restricted Unit covered by this Agreement has an income that qualifies it for occupancy of such Income-Restricted Unit as set forth in this Agreement. Annually thereafter, the Borrower shall obtain from each household that

leases an Income-Restricted Unit a signed Income Certification for Income-Restricted Units Form, attached hereto as **__Exhibit H__**, establishing the continued eligibility of such household, based on then current income, to occupy the Income-Restricted Unit under the terms of this Agreement, together with a signed Annual Rental Occupancy Affidavit, a form of which is provided by the County and attached hereto as **__Exhibit I__**, certifying that such household continues to occupy the Income-Restricted Unit.

(2) *Continued Occupancy by Overqualified Tenants*. Borrower covenants and agrees that during the term of the Affordability Compliance Period, if the annual income of a household residing in an Income-Restricted Unit increases above the qualifying income level, upon lease renewal that household shall be considered "over-income," and that household would no longer qualify to occupy such Income-Restricted Unit. Such household may nevertheless be permitted by the Borrower to remain in residence in the unit at the then-prevailing tax credit rent, subject to Section 42 of the Internal Revenue Code of 1986, as amended from time to time (the "**Code**"), or any corresponding provision or provisions of succeeding law.

(3) *Tenant not in Compliance*. In the event that a previously qualified Tenant is being evicted or removed for a default involving non-compliance with the occupancy requirements/income restrictions or lease terms described in this Article IV, the Borrower will continue to be considered in compliance with this document as long as the Borrower is pursuing possession of the Income-Restricted Unit occupied by such Tenant through all available legal means.

(b) __Income Certification__. Borrower covenants and agrees to verify that the income provided by an applicant or occupying household in an income certification is in compliance with the guidelines of Section 42 of the Code for the Low Income Housing Tax Credit Program.

(c) __Annual Report to the County__. Borrower covenants and agrees that during the term of the Affordability Compliance Period, Borrower shall submit to the County Board or its designee, not later than the sixtieth (60th) day after the close of each Budget Year; or such other date as may be requested by the County Staff, an Income-Restricted Unit Occupancy Report, a form of which is attached hereto as **__Exhibit J__**, listing the names of each household member occupying an Income-Restricted Unit, the qualifying income level of the household occupying such Income-Restricted Unit and the rental amount then being charged by Borrower for such Income-Restricted Unit. Further, the submitted Income-Restricted Unit Occupancy Report shall also contain the recertification date, unit number and any other information that the County Staff deems reasonably necessary. In addition, during the Affordability Compliance Period, the Borrower shall also submit to the County Board or its designee any other information or completed forms requested by the County Staff, including, but not limited to (i) a copy of the Tenant's rental application, (ii) a copy of the executed rental agreement (lease), (iii) the Income Certification for Income-Restricted Unit Form, including all supporting documentation, and (iv) a copy of any Annual Rental Occupancy Affidavit.

(d) __Additional Information; Records__. Borrower covenants and agrees to provide any additional information reasonably requested by the County Staff. The County Staff shall have the right during business hours to examine and make copies of all books, records or other documents of the Borrower which pertain to the Property. Borrower shall materially maintain complete, accurate and current records pertaining to the Property, and shall permit any duly authorized representative of the County Board during business hours to inspect records, including records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Property shall at all times be kept separate and identifiable from any other business of the Borrower and shall be maintained as required by the County in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Income-Restricted Units for a period of at least three (3) years.

(e) On-Site Inspections. The County shall have the right to perform an on-site inspection of the Property at least one time per year upon reasonable prior written notice to Borrower and during business hours. Borrower agrees to cooperate in such inspection.

Section 4.04. Miscellaneous Restrictions, Covenants and Terms of Affordable Housing Plan.

(a) Conversion of Non-Income-Restricted Units to Condominiums. If at any time prior to the expiration of the Affordability Compliance Period, and subject to Section 5.03, the Borrower causes non-Income-Restricted Units on the Property to be converted to ownership units (e.g. condominium conversion), such conversion shall not affect the Borrower's obligation to continue to operate the Income-Restricted Units as rental units subject to the terms and conditions of this Agreement and the Amended and Restated Borrower Declarations for the remainder of the Affordability Compliance Period. Further, prior to recording the Declaration converting the non-Income-Restricted Units to ownership units, Borrower covenants and agrees to record a document in the Arlington County land records, subject to County Board's prior written approval of such document, indicating which of the Property units will be preserved as Income-Restricted Units and subject to the restrictions and covenants set forth in this Article IV for the remainder of the Affordability Compliance Period

(b) Lease Provisions

(1) Borrower shall use a rental lease form approved by the County Staff. The rental lease form shall comply with all requirements of this Agreement and the Amended and Restated AHIF Loan Documents and shall, among other matters:

i. provide for termination of the lease for failure: (1) to provide any information required under this Agreement or reasonably requested by the Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Property in accordance with the standards set forth in this Agreement, or (2) to qualify as a Low Income Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

ii. provide that residents of all Income-Restricted Units have full access to all amenities provided to other residents of the Property, if any, subject to the rules, regulations and conditions (including fees) governing the use of these facilities for all other Tenants as reasonably established by the Borrower;

iii. be for a term of not less than one (1) year, and provide for no rent increase during such year other than as permitted by federal regulations. Borrower will provide each Tenant with at least thirty (30) days' written notice of any increase in rent applicable to such Tenant, and with such further notice as may be required by Section 4.02(g) above; and

iv. include the nondiscrimination language required pursuant to Section 4.04(d) below.

(2) Subject to the income eligibility and occupancy requirements for Tenants as outlined in this Section 4.02(a) and Section 4.02(b), the Borrower reserves the right to establish certain rental occupancy requirements and limitations in the leases, as approved by the County. Specifically, but without limitation, Borrower reserves the right to (a) to apply Borrower's typical credit and background check requirements to prospective Tenants, (b) limit household size for each Income-Restricted Unit in accordance with Borrower's maximum occupancy standard or County standard, as Borrower may choose; and (c) prohibit the subletting or assigning of Income-Restricted Units.

(c) Affirmative Marking Plan. Borrower covenants and agrees to implement an Affirmative Marketing Plan in substantially that form as required by the U.S. Department of Housing and Urban Development (HUD) and including, at a minimum, the elements specified herein as the Affordable Housing Plan. The Affirmative Marketing Plan shall further be in a form and substance acceptable to the County Manager, or designee, according to the County's criteria for such marketing plans as outlined in **Exhibit K**. The Borrower agrees that the proposed marketing plan shall call for the initial advertising and marketing of the Income-Restricted Units for a period of at least forty-five (45) days prior to the projected occupancy of the Howard Manor Apartments complex.

(d) Non-Discrimination.

(1) Borrower shall not, in the selection of Tenants, in the provision of services, or in any other manner, discriminate against any person on the grounds of Race, National Origin, Color, Marital Status, Sex, Religion, Age/Elderliness, Disability (physical or mental), Sexual Orientation, or Familial Status (being pregnant or having children under age 18), or discriminate in violation of any applicable law or regulation. The Borrower shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any related rules and regulations.

(2) Borrower shall not discriminate against prospective Tenants on the basis that they receive or are eligible to receive housing assistance under any Federal, State, or local housing assistance program and not to discriminate against or deny occupancy to any Tenant or prospective Tenant by reason that the Tenant has a minor child or children who will be residing with them.

(e) Covenants to Run with the Land. The County and the Borrower hereby declare their express intent that the covenants and restrictions set forth in this Article IV shall run with the land, and shall bind all successors in title to the Property during the Affordability Compliance Period, provided however, that upon the expiration of the Affordability Compliance Period, said covenants and restrictions shall automatically expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof during the Affordability Compliance Period, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract., deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement or such contract, deed or other instrument is executed after the expiration of the Affordability Compliance Period.

ARTICLE V
ADDITIONAL COVENANTS

Section 5.01. Amendment and Restatement of the Acquisition Phase AHIF Loan Agreement. The Borrower covenants and agrees that this Agreement shall amend and restate the Acquisition Phase AHIF Loan Agreement in its entirety.

Section 5.02. Insurance Requirements.

(a) Borrower covenants and agrees that from the Effective Date until the end of the Term of this Agreement, Borrower shall maintain the following insurance coverage throughout the Term:

i. To the extent required by law, Workers' Compensation insurance in accordance with the Virginia Workers' Compensation Act; and

ii. 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

iii. 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

iv. All Risk / Property and Fire insurance covering the entire Property for full replacement value.

v. 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 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 the execution of 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 Amended and Restated Borrower Declarations recorded against the Property, Borrower and any successor shall use any insurance proceeds awarded to repair or replace any damage to the Property.

Section 5.03. Restriction of Assignment and Transfer by Borrower.

(a) Definition. As used in this Agreement the term "**Transfer**" means:

i. any total or partial sale, lease, assignment, or other conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of any part of or interest in the Property, or any agreement to do any of the foregoing; or

ii. any total or partial sale, assignment, or other conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in the Borrower or any agreement to do any of the foregoing.

(b) Purpose of Restrictions on Transfer. This Agreement is entered into for the purpose of providing the Borrower with the AHIF Acquisition Loan to help facilitate the acquisition and substantial renovation of the Property by the Borrower or its successors or assigns in accordance with the terms of this Agreement and the Amended and Restated AHIF Loan Documents. The qualifications and identity of Borrower, CPDC and CHI, as an affiliate of CPDC and as the sole and managing member of CPDC Howard Manor LLC (the sole managing member of the Borrower), is of particular concern to the County, in view of:

i. the importance of the development of the Property as an affordable housing project to the general welfare of the community;

ii. the AHIF Program funds that have been made available by the County for the purpose of making such development possible;

iii. the reliance by the County upon the unique qualifications and ability of CPDC, CHI and the Borrower to serve as the catalyst for development of the Property and upon the continuing interest which the Borrower will have in the Property to assure the quality of the use, operation, and maintenance deemed critical by the County in the development of the Property;

iv. the fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Borrower or the degree thereof, is for practical purposes a transfer or disposition of the Property; and

v. the importance to the County of the standards of use, operation, and maintenance of the Property.

It is because of the qualifications and identity of CPDC, CHI and the Borrower that the County Board is entering into this Agreement and that Transfers are permitted only as provided in this Agreement.

(c) Prohibited Transfers. The limitations on Transfers set forth in this Section 5.03 shall apply throughout the Term. Except as expressly permitted in this Agreement, the Borrower represents that it has not made or created, and covenants and agrees that it will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior written approval of the County. Any Transfer made in contravention of this Section 5.03 shall at the County's discretion be void and shall be deemed to be a Default under this Agreement, whether or not Borrower knew of or participated in such Transfer.

(d) Permitted Transfers Without Prior County Approval. The Borrower covenants and agrees that the only Transfers permitted at any time without the prior approval of the County Board are as follows:

i. The rental of an Income-Restricted Unit or non-Income-Restricted Unit on the Property by the Borrower in the ordinary course of business and in compliance with this Agreement;

ii. The issuance of non-managing membership interest by the Borrower for the purpose of obtaining tax credits; provided, however, that CPDC Howard Manor LLC or an affiliate of CPDC Howard Manor LLC is a managing member of the Borrower, the only other managing member or managing members are non-profit corporations and the special members and/or investor members are persons or entities who are providing funds to the Borrower in consideration for receipt of federal and/or state tax credits allocated to the Borrower for financing the Renovation Project pursuant to this Agreement;

iii. The transfer by the Investor Members of their respective membership interests in the Borrower to any other entity which is an affiliate of the Investor Members or which is controlled by Hudson Housing Capital LLC;

iv. A change in the beneficial ownership of the Investor Members so long as such entity remains controlled by or is an affiliate of Hudson Housing Capital LLC; and

v. The pledge and encumbrance of the membership interests of the Investment Members in the Borrower to or for the benefit of any financial institution.

Borrower shall promptly notify the County Manager in writing of any such Transfer permitted without prior approval of the County Board.

(e) Permitted Transfers With Prior County Approval. Except as permitted under Section 5.03(d), the Borrower covenants and agrees that any Transfer shall be permitted only after (a) the County Board, in its sole discretion, has delivered to the Borrower its prior written approval of such Transfer, and (b) the transferee has assumed the Borrower's obligations under this Agreement by signing this Agreement or such other reasonable documentation as the County Attorney may require.

Section 5.04. County Right of First Refusal (ROFR).

(a) Phase I ROFR Term – Tax Compliance Period. Borrower covenants and agrees that, subject to Section 5.03 above, if the Borrower receives a bona fide offer to purchase the Howard Manor Apartments ("**Bona Fide Offer**") during the period of time commencing from the Effective Date and ending upon the close of the fifteenth (15^{th}) full year of the compliance period for the low-income housing tax credits for the Property (the "**Phase I ROFR Term**"), which offer the Borrower desires to accept, then the County shall have a right of first refusal to purchase the Howard Manor Apartments (the "**Phase I Refusal Right**") pursuant to the terms and conditions set forth in this Section 5.04 and at the fair market value price (the "**Phase I ROFR Term Purchase Price**"), as determined in Section 5.04(d) below.

(b) Phase II ROFR Term – Post-Tax Compliance Period. Borrower covenants and agrees that, subject to Section 5.03 above, if the Borrower receives a Bona Fide Offer during the period commencing upon the close of the fifteenth (15^{th}) full year of the compliance period for the low-income housing tax credits for the Property ("**Tax Credit Compliance Period**") and ending the date which is fifteen (15) years after the close of the Tax Credit Compliance Period (the "**Phase II ROFR Term**"), which offer the Borrower desires to accept, the County shall have a right of first refusal to purchase the Howard Manor Apartments (the "**Phase II Refusal Right**") pursuant to the terms and conditions set forth in this Section 5.04 and at the at the "minimum purchase price" as defined in Section 42(i)(7)(B) of the Code (the "**Phase II ROFR Term Purchase Price**"). In addition to all other applicable conditions set forth in this Section 5.04:

i. the foregoing grant of the Phase II Refusal Right shall be effective only if the County Board is currently and remains a "government agency" meeting the requirements of Section 42(i)(7)(A) of the Code until (A) the Phase II Refusal Right has been exercised and the resulting purchase and sale has been closed or (B) the Phase II Refusal Right has been assigned to a permitted assignee described in Section 5.04(f) hereof, and

ii. any assignment of the Phase II Refusal Right permitted under this Section 5.04 and the Phase II Refusal Right so assigned shall be effective only if the assignee is at the time of the assignment and remains at all times thereafter, until the Phase II Refusal Right has been exercised and the resulting purchase and sale has been closed, a permitted assignee described in Section 5.04(f) hereof that meets the requirements of Section 42(i)(7)(A) of the Code.

(c) Phase III ROFR Term. Borrower covenants and agrees that, subject to Section 5.03 above, if Borrower receives a Bona Fide Offer after the Phase II ROFR Term has expired and before the conclusion of the Affordability Compliance Period (the "**Phase III ROFR Term**"), which offer the Borrower desires to accept, the County shall have a right of first refusal to purchase the Howard Manor Apartments and/or Property (the "**Phase III Refusal Right**") pursuant to the terms and conditions set forth in this Section 5.04 and at the fair market value price (the "**Phase III ROFR Term Purchase Price**") as determined in Section 5.04(d) below, provided, however, that in no event shall the Phase III ROFR Term Purchase Price of the Howard Manor Apartments and/or Property be less than the Phase II ROFR Term Purchase Price to the extent required by law to maintain the tax benefits afforded to the Investor Members or any future investors under Section 42 of the Code.

(d) Phase I and Phase III Purchase Prices. The Phase I ROFR Term Purchase Price and the Phase III ROFR Term Purchase Price shall be determined as follows:

i. The fair market value of the Property, appraised as an affordable housing project to the extent continuation of such use is required pursuant to use restrictions applicable to the Project, with such appraisal to be made by a licensed appraiser, selected as set forth in subparagraph (ii) below, who has at least five years experience in Arlington County, Virginia, is a member of the Master Appraiser Institute (MAI), and who has substantial experience appraising affordable housing tax credit projects. The fair market value shall be calculated considering the nature of the reserves and any existing restrictions on the use or availability of such reserves.

ii. Borrower and the County Manager shall select a mutually acceptable appraiser who has the qualifications set forth in subparagraph (i) above, who shall determine the fair market value of the Property (the "**FMV ROFR Purchase Price**") in accordance with the requirements set forth in this Section 5.04. If the Borrower and the County Manager are unable to agree upon an appraiser, Borrower and the County Manager shall each select an appraiser. If the difference between the two appraisals is less than or equal to ten percent (10%) of the lower of the two appraisals, then the FMV ROFR Purchase Price shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser. If the two appraisers are unable jointly to select a third appraiser, then either the Borrower or the County Manager may, upon written notice to the other, apply to the Circuit Court of Arlington County to appoint a third appraiser. If the third appraisal is less than either of the first two, then the FMV ROFR Purchase Price shall be the average of the two lowest appraisals. If the third appraisal is greater than the first two, then the FMV ROFR Purchase Price shall be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the FMV ROFR Purchase Price shall be the value established by the third appraisal. Borrower and County Board, subject to appropriation, shall share the cost equally of any appraiser jointly selected or shall pay the costs of the appraiser they each select and shall share the cost equally of any third appraiser. The appraiser(s) shall have access to all books and records, this Agreement and the financial information and valuations reports of the Borrower.

(e) Manner of Exercise.

i. *Notice of Bona Fide Offer*. Subject to Section 5.03 above and Section 5.04(g) below, prior to accepting any Bona Fide Offer to purchase the Property, Borrower shall notify County Board of such Bona Fide Offer and deliver a copy thereof ("**Notice of Bona Fide Offer**").

ii. *Notice of Intent to Exercise Phase II Refusal Right*. The County Board may exercise its Phase II Refusal Right by giving a notice of intent to exercise its Phase II Refusal Right (the "**Phase II Refusal Right Notice of Intent**") within sixty (60) days after County Board has received the Borrower's Notice of Bona Fide Offer. The Phase II Refusal Right Notice of Intent shall specify a closing date that is within one hundred eighty (180) days immediately following the delivery of the Phase II Refusal Right Notice of Intent.

iii. *Notice of Intent to Exercise Phases I and II Refusal Rights*. Subject to Section 5.04(g) below, the County Board may exercise its Phase I Refusal Right and/or its Phase III Refusal Right by first giving a notice of preliminary intent to exercise its applicable Phase I or Phase III Refusal Right, subject to the fair market value price of the Property, (the "**Preliminary RR Notice of Intent**") within sixty (60) days after County Board has received the Borrower's Notice of Bona Fide Offer. If, after the determination of the fair market value price of the Property, pursuant to Section 5.04(d), the County Board determines to exercise its applicable Phase I or Phase III Refusal Right, the County Board shall provide the Borrower with a final intent to exercise its applicable Phase I or Phase III Refusal Right (the "**Final RR Notice of Intent**") within fifteen (15) days of such determination. The Final RR Notice of Intent shall specify a closing date that is within one sixty-five (165) days immediately following the delivery of the Final RR Notice of Intent.

iv. Borrower shall not accept any Bona Fide Offer unless and until the County Board's applicable Phase I Refusal Right, Phase II Refusal Right or Phase III Refusal Right has expired without exercise by the County Board in accordance with this Section 5.04.

(f) <u>Assignment of Right of Refusal</u>. Borrower hereby covenants and agrees to permit the County to assign any of its rights under this Section 5.04 to a party which is a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code or a "government agency" meeting the requirements of Section 42(i)(7)(A) of the Code. Upon any assignment hereunder, references in this Section 5.04 to the County shall mean the permitted assignee where the context so requires, subject to all applicable conditions to the effectiveness of the rights granted under this Section 5.04 and so assigned. No assignment of County's rights hereunder shall be effective unless and until the permitted assignee enters into a written agreement accepting the assignment and assuming all of County's obligations under this Section 5.04 and copies of such written agreement are delivered to the Borrower.

(g) <u>Right of First Refusal Subordinate to CHI's Right of First Refusal</u>. Notwithstanding any other provisions of this Agreement to the contrary, the County Board will not have the ability to exercise the Phase I Refusal Right, Phase II Refusal Right or Phase III Refusal Right until CHI, including any affiliate or successor thereof that has a right of first refusal, has first had the opportunity to exercise its right of first refusal or purchase option as provided in the Amended and Restated Operating Agreement and the Right of First Refusal and Purchase Option Agreement, dated March 7, 2011 and recorded in the office of the Clerk of the Circuit Court of

Arlington County, Virginia on October 24, 2011 in Deed book 4498, at page 191 (the ***"CHI ROFR Agreement*"**) as the CHI ROFR Agreement may be amended, amended and restated, or any successor agreement thereto that provides CHI, including any affiliate or successor thereof, with any such or similar right; provided, however, that CHI, including any affiliate or successor thereof is a nonprofit entity under Section 501(c)(3) of the Code whose primary mission is to preserve financially sound, socially responsible, affordable housing for low and moderate income individuals and families and offer a range of supportive services for the children, adults, seniors, and disabled individuals that strengthen communities and increase opportunities for growth.

Section 5.05. County's Role as Lender. Borrower hereby covenants, agrees and acknowledges that 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 renovation of the Property or the construction of any improvements. Whenever in this Agreement County Board or County Staff 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 or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County 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 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.

Section 5.06. Tenant Relocation Plan. Borrower agrees and covenants that in order to minimize displacement of current residents of the Howard Manor Apartments complex, Borrower shall comply with its Tenant Relocation Plan, attached hereto as **Exhibit E**.

Section 5.07. 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 (as defined in Section 6.14 below) on the Property, nor generate or permit any Hazardous Substances to be generated on the Property; nor store or permit any Hazardous Substances to be stored on the 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 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 Property, or emanating from the 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 Property or emanating from the 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 Property in such a manner as to bring the 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 Property, and to avoid the imposition of any liens on the 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 Property at any time while the AHIF Acquisition Loan is outstanding and such other information with respect to Hazardous Substances at the Property the County Board from time to time may require.

Section 5.08. Property Condition. Borrower covenants and agrees that all Income-Restricted Units shall comply with all applicable local, state and federal laws, statutes, ordinances and regulations and any other applicable property standards necessary to permit occupancy of the Income-Restricted Units.

(a) Maintenance. The Borrower covenants and agrees to perform or cause to be performed normal and routine maintenance and repair on the Property during the Affordability Compliance Period and to make the Property habitable and available to a new Tenant after any vacancy occurs. The Borrower agrees to maintain the Property in compliance with Chapter 29 of the Housing Standards Ordinance of Arlington County, the Building Officials and Code Administrators (BOCA)'s National Property Maintenance Code, as adopted by Arlington County, and the Housing Quality Standards of the Section 8 Program so as to provide housing that is safe and sanitary for its tenants.

(b) Physical Inspection. Upon advanced notice of at least forty-eight (48) hours, Borrower covenants and agrees that the County Staff or their designee shall have the right during Borrower's normal business hours to inspect the Property, all books and records related thereto including, but not limited to, rental applications, rent rolls, and all other relevant documents which pertain to rents paid, occupancy, and incomes of all Tenants.

(c) Lead-Based Paint. Borrower covenants and agrees to comply with HOME Lead-Based Paint requirements, including the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of the HOME Investment Partnerships Act, as amended, and all subsequent applicable rules and regulations.

Section 5.09. Minority Outreach Program. Borrower covenants and agrees to encourage the use of, and provide the opportunity for, Minority and Women Business Enterprises in the selection of real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants and providers of legal services for the acquisition and operation of the Property. The Borrower shall supply to the County Board evidence of compliance in the form of newspaper advertisements, request for proposal lists or other documentation as required by the County Board to ensure compliance with this Section.

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 Property and carry on its business as now being conducted. The Managing Member is a duly organized and validly existing limited liability company 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 Amended and Restated AHIF 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 Amended and Restated AHIF 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 Amended and Restated AHIF 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 Amended and Restated AHIF 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 Amended and Restated AHIF 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 Renovation Project will comply with all applicable laws, ordinances, rules and regulations of the federal government, the Commonwealth of Virginia and Arlington County and will comply with all applicable directions, rules and regulations of the fire marshal, health officers, building inspectors 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 Howard Manor Apartments, 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 AHIF Acquisition Loan or renovate, operate or maintain the 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 Amended and Restated Deed of Trust, Borrower shall have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County Board, 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 material adverse 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 AHIF Acquisition Loan, together with the other funding identified in the Renovation Project Budget and Operating Pro Forma, attached hereto as **Exhibit L**, are sufficient to cover the costs associated with the Renovation Project and initial operation of the Property 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 AHIF Acquisition Loan or required by the Amended and Restated AHIF 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 Property is subject, which may be necessary in relation to this Agreement or the acquisition, renovation, construction, operation or ownership of the 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 oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called "**Hazardous Substances**"), 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., has been or is being generated, stored, released or disposed of on, under or from the Property, except for certain hazardous substances as previously disclosed to the County Board in written environmental reports delivered to the County Board, as to all of which Hazardous Substances the Borrower shall 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 anticipated Renovation Project and occupancy of any units therein.

Section 6.14. Affiliate of CPDC. Borrower is an ownership affiliate of CPDC.

ARTICLE VII
DEFAULT AND TERMINATION

<u>Section 7.01. Events of Default</u>. Each of the following shall constitute an event of default on the part of Borrower ("**Event of Default**"):

(a) <u>Commencement and Completion of the Renovation Project</u>. Borrower's failure to commence or complete the Renovation Project by the times set forth in Sections 3.03 and 3.04 of this Agreement, or abandons or suspends the Renovation Project prior to completion for a period of forty-five (45) days or more, subject to Force Majeure.

(b) <u>Non-Permissible Uses of the AHIF Acquisition Loan Funds</u>. Any use of the County AHIF funds by the Borrower other than for permissible uses referenced in Section 2.07(a)

(c) <u>Failure to Make Annual Payment or Provide Residual Receipts Certificate</u>. Failure to make an Annual Payment or provide a Residual Receipts Certificate when due, pursuant to this Agreement and the Amended and Restated AHIF Loan Documents, provided that, in case of a failure to make an Annual Payment on the AHIF Acquisition Loan or provide a Residual Receipts Certificate, a Default shall not exists if cured within ten (10) calendar days.

(d) <u>Failure to Make Payment in Full</u>. Failure to pay all outstanding principal and accrued interest on the AHIF Acquisition Loan, together with any other sums evidenced by the Amended and Restated Promissory Note or secured by the Amended and Restated Deed of Trust and/or any other Amended and Restated AHIF Loan Documents, when immediately due and payable in full pursuant to this Agreement and the Amended and Restated AHIF Loan Documents.

(e) <u>Transfer</u>. A Transfer occurs, either voluntarily or involuntarily, in violation of Section 5.03.

(f) <u>Delinquent Taxes</u>. Subject to Borrower's right to contest the following charges, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or fails to pay when due any other charge that may result in a lien on the 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.

(g) <u>Default on Secured Debt</u>. An event of default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the 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.

(h) <u>Representation or Warranty Incorrect</u>. Any Borrower representation or warranty contained in this Agreement, the Amended and Restated AHIF Loan Documents, or in any application, financial statement, certificate, or report submitted to the County in connection with this Agreement or any of the Amended and Restated AHIF Loan Documents, which is incorrect in any material and adverse respect when made and continues to be materially adverse to the County Board.

(i) 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 the indebtedness evidenced by the Borrower's promissory notes to the County Board, without need for any action by the County Board.

(j) 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 the indebtedness evidenced by the Borrower's promissory notes to the County Board, without need for any action by the County Board.

(k) Suspension; Termination. Borrower 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.

(l) Liens on Property. There shall be filed any claim of lien (other than liens associated with the CONA Renovation Debt and the VHDA Renovation Debt) against the Property of any part thereof, or any interest or right made appurtenant thereto, 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.

(m) Mismanagement of Housing Units. Failure to manage and operate the Property in a prudent or businesslike manner in accordance with industry standards for similar affordable residential projects.

(n) 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 Amended and Restated AHIF Loan Documents.

(o) 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 the development, renovation or operation of the Property.

(p) 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 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 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. The County shall provide copies of all notices to the Borrower and to the Investor Members and the Investor Members shall have the right, but not the obligation, to cure any default hereunder and such cure shall be accepted as though offered by the Borrower.

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 loan and shall give the County Board the right to proceed with any and all remedies set forth in this Agreement and the various Amended and Restated AHIF 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 Amended and Restated Promissory Note, together with any accrued interest thereon, to become immediately due and payable. After such declaration, interest on the AHIF Acquisition 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 AHIF Acquisition 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 Amended and Restated AHIF Loan Documents, or to enjoin acts on things which may be unlawful or in violation of the provisions of this Agreement or the Amended and Restated AHIF 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 AHIF Acquisition 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.

(d) Replacement of Housing Management. The County Manager shall have the right (but not the obligation) to substitute those associated with operating and managing the Property, including on-site and off-site personnel, with other personnel of the County Manager'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 Amended and Restated AHIF 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 and the County Board 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

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

To the Borrower:
Howard Manor LLC
c/o Community Preservation and Development Corporation
5513 Connecticut Avenue, NW – Suite 250
Washington, DC 20015
Attn: Paul P. Browne, Vice President
Fax: (202) 895-8805
Email: pbrowne@cpdc.org

With a Copy to:
Klein Hornig LLP
145 Tremont Street
Boston, Massachusetts 02111
Attn: Jonathan Klein
Fax: (617) 224-0601
Email: jklein@kleinhornig.com

Hudson SLP LLC
c/o Hudson Housing Capital LLC
630 Fifth Avenue, 28th Floor
New York, New York 10111
Attn: Joseph A. Macari

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, guarantor and borrower 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 Property, and (c) such claims, liabilities, or losses which arise out of the renovation, construction and operation of the 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 solely 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 Amended and Restated 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 Property for the entire Term, and the benefit hereof shall inure to the benefit of the County and its successors and assigns.

<u>Section 8.08. Severability</u>. 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.

<u>Section 8.09. Governing Law</u>. This Agreement and the Amended and Restated AHIF 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.

<u>Section 8.10. Liability of the County</u>. The County Board, by the acceptance and performance of this Agreement does not assume any liability, and the Borrower, CPDC and CHI 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, CPDC or CHI upon the County Board or such employees or agents for or on account of any matter or thing.

<u>Section 8.11. Exhibits</u>. All Exhibits referred to in this Agreement are by such references fully incorporated herein.

<u>Section 8.12. Entire Agreement, Waivers and Amendments</u>. 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 AHIF Acquisition 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.

<u>Section 8.13. Time of the Essence</u>. Time is of the essence in the performance of this Agreement.

<u>Section 8.14. Language Construction</u>. 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.

<u>Section 8.15. Counterparts</u>. 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.

<u>Section 8.16. No Waiver of Sovereign Immunity by County</u>. 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.

<u>Section 8.17. VHDA Foreclosure</u>. Notwithstanding any other provisions of this Agreement to the contrary, in the event that there is a default under the deed of trust of the VHDA Renovation Debt or any successor deed of trust of VHDA as a lender on the Property allowed by the County that results in a foreclosure or deed in lieu of foreclosure on the Property, the Amended and Restated Borrower Declarations shall immediately thereafter terminate.

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

IN WITNESS WHEREOF, the County 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:

____
County Attorney

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

By: ______________________________
Barbara Donnellan, County Manager

HOWARD MANOR LLC, a Virginia limited liability company

By: CPDC HOWARD MANOR LLC, a Virginia limited liability company, its managing member

By: COMMUNITY HOUSING, INC., a Maryland non stock corporation, its sole member

____
Christopher LoPiano, Senior Vice President

Exhibit A
PROPERTY DESCRIPTION

[To be Provided by the Borrower]

(End of Exhibit "A")

Exhibit B
FORM OF AMENDED AND RESTATED PROMISSORY NOTE

[To be Finalized]

Exhibit C
FORM OF AMENDED AND RESTATED DEED OF TRUST

[To be Finalized]

Exhibit D
FORM OF AMENDED AND RESTATED BORROWER DECLARATIONS

[To be Finalized]

Exhibit E
TENANT RELOCATION PLAN

[To be Provided by the Borrower]

Exhibit F
UTILITY ALLOWANCE

Allowances for Tenant-Furnished Utilities and Other Services

Allowances for Tenant-Furnished Utilities And Other Services

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Locality: **Arlington**		Unit Type: **Apartment**			Date:	**07/01/2011**
		Monthly Dollar Allowances				
Utility or Service		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	22	27	32	36	43	48
	b. LPG/Propane	35	49	63	77	94	108
	c. Oil	26	36	47	57	73	83
	d. Electric	12	17	21	26	33	37
	e. Heat Pump	9	13	20	23	29	33
Cooking	a. Natural Gas	4	6	7	9	11	13
	b. LPG/Propane	14	20	26	31	40	45
	c. Electric	5	7	9	11	15	17
	d. Coal/Other						
Other Electric/Lighting		24	31	38	44	55	61
Air Conditioning		5	7	10	12	15	17
Water Heating	a. Natural Gas	9	12	16	19	24	28
	b. LPG/Propane	30	42	55	67	85	97
	c. Oil	22	31	40	49	62	71
	d. Electric	13	18	24	29	37	42
	e. Coal/Other						
Water		6	9	15	25	34	43
Sewer		14	21	35	56	77	98
Trash Collection		27	27	27	27	27	27
Range/Microwave		NA	NA	NA	NA	NA	NA
Refrigerator		NA	NA	NA	NA	NA	NA
Other--Specify							

Actual Family Allowances To be used to compute allowance. Complete below for the actual unit rented.
Name of Family
Address of Unit
Number of Bedrooms

Utility or Service	Monthly Cost
Heating	
Cooking	
Other Electric	
Air Conditioning	
Water Heating	
Water	
Sewer	
Trash Collection	
Range/Microwave	
Refrigerator	
Other	
Total	

Exhibit G
SCOPE OF WORK

[To be Provided by Borrower]

Exhibit H
INCOME CERTIFICATION FOR INCOME RESTRICTED UNITS

The Borrower or its designated agent shall obtain from each Tenant leasing an Income Restricted Unit in Howard Manor Apartments information regarding annual income in order to ensure that the Tenant meets the income eligibility criteria for the Income Restricted Unit. The Tenant must continue to meet these criteria in order to continue to lease the Income Restricted Unit. The Tenant's income must be certified annually at the beginning of each lease year.

The attached form is to be used for the initial certification of income and each annual recertification. Third party verification of income is required and copies of Federal and State income tax returns, W-2 forms, pay stubs or statements from employers may be requested. The certification form must be notarized.

The Borrower or its designated agent shall maintain on file for the Arlington County Housing Development Office the initial income certification for each Income Restricted Unit and the annual recertification that establishes continuing eligibility of each Tenant to lease the Income Restricted Unit.

INCOME CERTIFICATION FORM

Property Name: **HOWARD MANOR APARTMENTS**

Building Number, Unit Number____

I/We, the undersigned, certify that this Income Certification is being prepared to determine eligibility for occupancy of an Income-Restricted Unit.

NEW_______ RECERTIFICATION________ DATE LAST CERTIFIED_______________

PART I – OCCUPANTS

	Household Name Member	Relationship to Applicant	Age	Full-time Student (Yes/ No)
1.	______________________________	_________________________	_____	_________
2.	______________________________	_________________________	_____	_________
3.	______________________________	_________________________	_____	_________
4.	______________________________	_________________________	_____	_________
5.	______________________________	_________________________	_____	_________

PART II – INCOME

It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the Income-Restricted Unit Program. In order to verify that an individual or household satisfies these requirements, Arlington County Department of Community Planning, Housing & Development, Housing Division, requires the property owner to obtain third party verification of income. Such documentation includes, but is not limited to, copies of Federal and State income tax returns, W-2 forms, pay stubs, and statements from employers.

Income includes, but is not necessarily limited to, the following sources. Please check "yes" or "no" to indicate all sources of income for all household members.

Income Certification Form

Yes No
❑ ❑ 1. Wages and salary, gross amounts (full and part-time employment)
❑ ❑ 2. Child support
❑ ❑ 3. Alimony
❑ ❑ 4. Interest on assets (interest-bearing checking accounts, savings accounts, certificates of deposit, etc.) which have balances of $5,000 or more
❑ ❑ 5. Dividends from stocks, bonds
❑ ❑ 6. Social Security income
❑ ❑ 7. Veterans benefits
❑ ❑ 8. Overtime, commissions, tips and bonus payments
❑ ❑ 9. Unemployment insurance
❑ ❑ 10. Pension and retirement payments
❑ ❑ 11. Disability payments
❑ ❑ 12. Any other annuities or stipends received
❑ ❑ 13. Income from real estate investments
❑ ❑ 14. Income from a business or partnership owned or operated by a household member
❑ ❑ 15. Regular gifts or contributions from persons not members of the household
❑ ❑ 16. Net income from business operations
❑ ❑ 17. Public assistance
❑ ❑ 18. Other Income_______________________________________

Please list all items checked "yes":

Household Member	Employment income	Social Security or pensions	Income from assets	Other
	$	$	$	$
	$	$	$	$
	$	$	$	$
	$	$	$	$
Totals	$	$	$	$

TOTAL ANTICIPATED ANNUAL HOUSEHOLD INCOME___________________________

TENANT'S STATEMENT: The information on this form is to be used to determine maximum income for eligibility. I/We certify that the statements above are true and complete to the best of my/our knowledge and belief and are given under the penalty of perjury.

_____________________________________ __________________________

_____________________________________ __________________________

_____________________________________ __________________________

_____________________________________ __________________________

Signature of each person 18 and over Date

Exhibit H
INCOME CERTIFICATION FOR INCOME RESTRICTED UNITS

COMMONWEALTH of VIRGINIA

The foregoing instrument was acknowledged before me in the___________ of
__________________, Virginia this _____day of ________________________
by _________________________________.

My commission expires the ____________day of ________________________, ____.

PART III – OWNER CERTIFICATION

_______________________________________ ___________________________

Signature of Owner's Authorized Representative Date

Exhibit I
ANNUAL RENTAL OCCUPANCY AFFIDAVIT

INCOME-RESTRICTED UNIT ANNUAL RENTAL OCCUPANCY AFFIDAVIT

I/We ____hereby certify that: (insert name or names of lessees)

1. I/We rent the Income-Restricted Unit located at

   ____
   (Insert complete address of the Income-Restricted Unit including apartment number)

2. I/We occupy the Income-Restricted as my/our domicile, and

3. I/We have occupied the Income-Restricted on this basis continuously since renting it.

By: _____________________________ _______________________________
(signature of lessee and date) (type or print name)

By: _____________________________ _______________________________
(signature of lessee and date) (type or print name)

By: _____________________________ _______________________________
(signature of lessee and date) (type or print name)

NOTE: All those named on the lease must sign. Add more lines if needed.

COMMONWEALTH of VIRGINIA, to wit:

Submitted, sworn to and acknowledged before me

by____

______________________this ____________day of _____________________

____
Notary Public

My commission expires:
My registration number is

Exhibit J
INCOME-RESTRICTED UNIT OCCUPANCY REPORT

[To be Provided]

Exhibit K
AFFIRMATIVE MARKETING PLAN

[To be Provided by Borrower]

Exhibit L

RENOVATION PROJECT BUDGET AND OPERATING PRO FORMA

[To be Provided by Borrower]