

December 13, 2023

**WHEREAS**, on May 9, 2018, the City Council authorized the adoption of the Comprehensive Housing Policy (CHP) by Resolution No. 18-0704; and

**WHEREAS**, after the adoption of the CHP, the City Council authorized multiple amendments to the CHP on November 28, 2018, by Resolution No. 18-1680; on May 22, 2019, by Resolution No. 19-0824; on March 27, 2019, by Resolution No. 19-0429 and Ordinance No. 31142; on June 12, 2019, by Resolution No. 19-0884; on June 26, 2019, by Resolution No. 19-1041; on September 25, 2019, by Resolution No. 19-1498; on December 11, 2019, by Resolution No. 19-1864; on September 9, 2021, by Resolution No. 21-1450; on January 22, 2020, by Resolution No. 20-0188; on August 26, 2020, by Resolution No. 20-1220; on January 27, 2021, by Resolution No. 21-0212; on September 9, 2021, by Resolution No. 21-1450; on October 13, 2021, by Resolution No. 21-1655; on October 13, 2021, by Resolution No. 21-1656; on May 11, 2022, by Resolution No. 22-0744; on September 28, 2022, by Resolution No. 22-1432; and

**WHEREAS**, on August 7, 2020, the City issued a Notice of Funding Availability (NOFA), as amended, in accordance with the CHP; and

**WHEREAS**, on June 23, 2021, the City Council authorized the acceptance of grant funds from the U.S. Department of Treasury for the Coronavirus Local Fiscal Recovery Fund to provide relief during the ongoing COVID-19 pandemic by Resolution No. 21-1149; and

**WHEREAS**, on September 22, 2021, the City Council authorized the final reading and adoption of the appropriation ordinance for the FY 2021-22 City of Dallas Operating, Capital, and Grant & Trust Budgets, which included the American Rescue Plan Act (ARPA) funds from the U.S. Department of Treasury for the Coronavirus Local Fiscal Recovery Funds by Resolution No. 21-1590 and Ordinance No. 32000; and

**WHEREAS**, Cypress Creek Montfort Drive, LP (Applicant) submitted an application for gap financing for a proposed acquisition and development of a 168-unit mixed-income multifamily complex known as Cypress Creek Apartment Homes at Montfort in the City of Dallas, Texas, including 67 one-bedroom, 84 two-bedroom, and 17 three-bedroom units to include amenities (Project), and received a fundable NOFA score of 99 of 143 points; and passed a third-party underwriting review; and

**WHEREAS**, the Applicant will provide modern security features to include camera system and controlled access in accordance with the NOFA criteria and the Office Equity and Inclusion Fair Housing Division recommendations to ensure a safe living environment for all residents and staff; and

**WHEREAS**, on August 24, 2022, the City Council authorized the execution of a development loan agreement with Applicant in an amount not to exceed \$4,100,000.00 in Coronavirus State and Local Fiscal Recovery Funds for the Project by Resolution No. 22-1191; and

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**WHEREAS**, on December 14, 2022, the City Council held a public hearing to receive public comments and approved the final adoption of the 2022 Community Development Block Grant Disaster Recovery (CDBG-DR) Budget and draft Action Plan to accept CDBG-DR Funds from the U.S. Department of Housing and Urban Development which included New Construction - Multi-Unit funds by Resolution No. 22-1836; and

**WHEREAS**, on April 12, 2023, the City Council adopted the Dallas Housing Policy 2033 (DHP33) to replace the CHP by Resolution No. 23-0443 and the Dallas Housing Resource Catalog (DHRC) to include the approved programs from the CHP by Resolution No. 23-0444; and

**WHEREAS**, the Department of Housing and Neighborhood Revitalization continues operating its programs, previously authorized and adopted under the CHP, now as restated in the Dallas Housing Resource Catalog approved on April 12, 2023; and

**WHEREAS**, CDBG-DR Funds must only be spent for necessary activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the “most impacted and distressed (MID)” areas of qualifying disasters; and

**WHEREAS**, the entire City of Dallas is included in the MID. New construction of affordable housing is an eligible activity under HUD’s CDBG-DR policy as it addresses a direct or indirect impact of the February 2021 winter and ice storm that resulted in damaged or destroyed available affordable housing stock in Dallas, TX; and

**WHEREAS**, on October 4, 2023, due to continued increases in construction cost and construction loan interest rates, the Applicant submitted a subsequent proposal under the City’s NOFA, as amended, to receive additional funds to fill this most recent funding gap for the Project, in the amount of \$7,646,555.00; and passed a subsequent third-party underwriting review; and

**WHEREAS**, as a requirement of the Applicant’s Application to TDHCA for a competitive 9% Housing Tax Credit (HTC), the Applicant will provide the following: at least 41 of the 168 units to households earning at or below 30.00% of Area Median Income (AMI), 41 of the 168 units will be made available to households earning between 31%-60% AMI, 34 of the 168 units will be made available to households earning between 61%-80% AMI. Of the 116 affordable units, the Applicant must provide 58 ARPA/CDBG-DR-assisted units consisting of 46 High ARPA/CDBG-DR and 12 Low ARPA/CDBG-DR-assisted units. These ARPA/CDBG-DR-assisted units must remain affordable for a minimum of 30 years per federal and Dallas Housing Resource Catalog requirements secured by a restrictive covenant and;

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**WHEREAS**, to assist in the affordable housing production goals established in the CHP, as restated in the Dallas Housing Resource Catalog, the City desires to enter into a development loan agreement with the Applicant in an amount not to exceed \$4,100,000.00 in ARPA funding, and a development loan agreement in an amount not to exceed \$7,646,555.00 in CDBG-DR Funds for a total amount not to exceed \$11,746,555.00 for the development of Cypress Creek Apartment Homes at Montfort; and

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City Manager is hereby authorized to increase the loan amount under the development loan agreement with Cypress Creek Montfort Drive, LP or its affiliate (Applicant), approved as to form by the City Attorney, for the development of Cypress Creek Apartment Homes at Montfort, a 168-unit affordable 2022 9% Competitive Low Income Housing Tax Credit multifamily complex located at 14119 Montfort Drive, Dallas, TX 75254 (Project), in an amount not to exceed \$7,646,555.00, increasing the loan from a total not to exceed amount of \$4,100,000.00 to \$11,746,555.00.

**SECTION 2.** That the City Manager is hereby authorized to execute a development loan agreement with Applicant, approved as to form by the City Attorney, described herein including any financing and associated documents related to the loan agreement, subordinations to financial institution lien(s), and release of liens and termination of deed restrictions on the property upon satisfaction of all applicable conditions, approved as to form by the City Attorney. The Director of the Department of Housing & Neighborhood Revitalization (Director) may extend deadlines by up to two years.

**SECTION 3.** That the City Manager is authorized to increase the development loan to Cypress Creek Montfort Drive, LP for the Project from \$4,100,000.00 in ARPA HOME Funds to include \$7,646,555.00 in CDBG-DR Funds for a total amount not to exceed \$11,746,555.00.

**SECTION 4.** That pursuant to the development loan agreement, the Applicant must:

- A. Provide 58 ARPA/CDBG-DR-assisted units consisting of 46 High ARPA/CDBG-DR and 12 Low ARPA/CDBG-DR-assisted units. These ARPA/CDBG-DR-assisted units must remain affordable for a minimum of 30 years per federal and DHP33 requirements secured by a restrictive covenant. The HTC affordable units may satisfy CDBG-DR affordability requirements and vice versa. Subject to the ARPA and CDBG-DR federal regulations, the Director may authorize minor changes to the affordability unit mix so long as the revised unit mix adheres to the Dallas Housing Policy 2033 and the Dallas Housing Resource Catalog, (together formerly known as the Comprehensive Housing Policy) and the project maintains a fundable NOFA score.

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**SECTION 5.** Funds will be used for vertical construction costs such as framing, roofing, carpentry, and other eligible costs, as allowed by federal regulations governing the use of the funds. All funds will be provided on a reimbursable basis.

The ARPA and CDBG-DR loans are both repayable subject to the following terms:

- A. The term of the loan shall be 40 years beginning from the effective date and ends on the maturity date. The maturity date and the repayment schedule shall be defined/detailed in the loan agreement and other financing documents for the loan, in accordance with the DHP33 and DHRC;
- B. Applicant shall complete construction of the 168 units within two years of the effective date, which may be extended by the Director for up to two years (unless prohibited by the applicable regulations);
- C. The unit mix will include 67 one-bedroom apartments, 84 two-bedroom apartments, and 17 three-bedroom apartments. The requirements of this subsection may be modified by the Director where permitted by the applicable ARPA or CDBG-DR regulations;
- D. Loan amortization is 40 years, with an interest rate of one percent simple annual interest
- E. Applicant must execute a promissory note(s) for the total loan amount;
- F. The owner of the property shall execute and record deed restrictions on the property. The promissory note and deed restrictions may be subordinate to deed restrictions issued by TDHCA, HUD and/or to other financing (without waiving compliance with such deed restrictions) provided that the City's deed restrictions or regulatory agreement, as applicable, have priority over any monetary liens, and shall be recorded to secure the 30-year affordability period for the affordable CDBG-DR and ARPA-funded units and the 15-year voucher period for the requirement to make best efforts to lease up to 10 percent of the units to holders of housing vouchers pursuant to Chapter 20A of the Dallas City Code and the DHP33 and DHRC;
- G. The owner of the property, shall execute and record a deed of trust on the property, including the leasehold and all improvements to secure payment and performance which will be released once all terms and conditions of the CDBG-DR and ARPA loan agreement(s) are met;
- H. The City's lien for the loan agreement may be subordinate to a financial institution's lien provided that: i) the City's deed restrictions or regulatory agreement, as applicable, have priority over any monetary liens and ii) any such subordination is in compliance with the requirements of the DHP33 and DHRC. In the event subordination agreements are required, the City agrees to provide the subordination agreement in a form acceptable to the City;
- I. Applicant shall provide guarantees including a completion and operating deficit guaranty for the loan agreement;
- J. Applicant must provide payment and performance bonds or guarantees, or acceptable equivalent methods of guarantees to the City in the total amount of the construction of the development;

**SECTION 5.** (continued)

- K. Repayment of loan principal and interest shall be an annual surplus cash payment. The City's surplus cash loan funding will be structured with note provisions requiring that at least 50 percent of Eligible Cash, as defined in the DHP33 and DHRC, in excess of \$50,000.00 be paid annually to subordinate lenders (including funding partners and related parties) on a prorated basis;
- L. A default under the ARPA loan agreement shall constitute a default under the CDBG-DR loan agreement, and vice versa;
- M. The CDBG-DR and ARPA loans shall be a nonrecourse loan and the City's remedy is limited to foreclosure only, in the event of an uncured default; and
- N. Although the term, the maturity date, and the amortization are anticipated to be for a period of 40 years, the Director may adjust the period of years, subject to the applicable federal regulations, DHP33 and DHRC, so that it is of such length as required by the senior lender but not longer than 12 months after the term of the senior loan.

**SECTION 6.** That the ARPA and CDBG-DR loan agreements are both conditioned upon:

- A. Project receiving additional third-party underwriting; and
- B. Approval of equity, construction, and permanent financing documentation in a form acceptable to the City; and
- C. HUD federal requirements including environmental review, site and neighborhood standards, cost reasonableness, subsidy layering, and underwriting; and
- D. Applicant shall make a good faith effort to comply with the City's Business Inclusion and Development goal of 32 percent participation by certified Minority/Women-owned Business Enterprises for all hard construction expenditures of the Development (i.e., public and private improvements) and meet all reporting requirements of the City of Dallas Office of Business Diversity; and
- E. All conditions listed in the DHP for applicable developer programs; and
- F. Final underwriting; and
- G. Closing on equity and all other financing for the development.

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**SECTION 7.** That the City Manager is authorized to obligate the Applicant to make payment for the City's outside counsel legal fees for the drafting and negotiation of the loan agreement and any related financing, subordination and associated documents for the Project, approved as to form by the City Attorney (the Loan Documents), directly to the City's outside legal counsel on the date that all of the financing for construction of the Project and execution of the Loan Documents, as approved by the City, the Applicant's other lenders and all necessary parties, other than the federal funds (the Closing) takes place. In the event that the Closing does not occur, then Applicant shall be obligated to pay the City an amount equal to the City's outside legal fees incurred by the City to draft and negotiate the Loan Documents within thirty days of the date on which the Closing was to occur.

**SECTION 8.** That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$7,646,555.00 for the Project to Cypress Creek Montfort Drive, LP or its affiliate from CDBG-DR Fund CDD1, Department HOU, Unit 946G, Object 3015, Encumbrance/Contract No. HOU-2022-00018436, Vendor VC25432 as the City receives and reviews reimbursement requests and related supporting documentation submitted by Cypress Creek Montfort Drive, LP for eligible expenditures and accepts supporting evidence as defined in the agreements.

**SECTION 9.** That the Chief Financial Officer is hereby authorized to record notes receivable - developers loan in Balance Sheet Account 033F and deferred revenue in Balance Sheet Account 050A for the amount of the loan in Section 7.

**SECTION 10.** That the Chief Financial Officer is hereby authorized upon receipt of payment on the notes receivable to record principal payment revenue in CDBG-DR Program Income Fund, Fund HUPI, Department HOU, Unit 994G, Revenue Code 8520 and interest payment revenue in CDBG Program Income Fund, Fund HUPI, Department HOU, Unit 994G, Revenue Code 8521.

**SECTION 11.** That this resolution does not constitute a binding agreement upon the City or subject the City to any liability or obligation until such time as the loan documents are duly approved by all parties and executed.

**SECTION 12.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.