



## Capital Area Housing Finance Corporation

### Interlocal Agreement

THIS INTERLOCAL AGREEMENT (this “*Agreement*”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”), by and between the CAPITAL AREA HOUSING FINANCE CORPORATION (the “*Capital Area HFC*”), a public, non-profit housing finance corporation duly organized and existing under the laws of the State of Texas, and \_\_\_\_\_ (the “*Governing Body*”).

### Witnesseth

WHEREAS, the Capital Area HFC is authorized by the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the “*Act*”), to (a) lend money for its corporate purposes and invest and reinvest its funds; (b) borrow money at rates determined by the Capital Area HFC; and (c) pledge all or any part of the revenues, receipts or resources of the Capital Area HFC from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Capital Area HFC in order to secure the payment of the Capital Area HFC’s obligations; and

WHEREAS, pursuant to the Act, the Capital Area HFC has established a 2011 Multifamily Developer Loan Program (the “*Program*”) under which the Capital Area HFC is authorized to make loans to eligible borrowers to help finance the acquisition, construction or rehabilitation of multifamily housing developments located within the jurisdiction of the Capital Area HFC and in other jurisdictions with the authorization of the applicable local housing authority; and

WHEREAS, the Capital Area HFC intends to loan funds to \_\_\_\_\_ (the “*Borrower*”), to help finance the [acquisition, construction, rehabilitation] of certain property (the “*Loan*”) located in the jurisdiction of the Governing Body; and

WHEREAS, the Governing Body hereby authorizes and consents to the Loan on the terms specified in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **Section 1. Recitals.**

The recitals set forth above are incorporated herein for all purposes and are found by the parties hereto to be true and correct. It is further found and determined that the parties hereto have authorized and approved this Agreement by resolution or order adopted by their respective bodies, and that this Agreement will be in full force and effect when executed by both parties.

#### **Section 2. Development Funding.**

The Governing Body hereby agrees that the Capital Area HFC may provide the Loan to the Borrower in connection with the [acquisition, construction, rehabilitation] of an approximately \_\_\_ unit

apartment project located in the Governing Body's jurisdiction in accordance with the terms set forth in a Term Loan Agreement (the "*Loan Agreement*") to be entered into between the Capital Area HFC and the Borrower.

The parties hereto acknowledge and agree that neither the full faith and credit of the Governing Body or the State of Texas, nor the taxing power of the Governing Body, if any, or the State of Texas or any other political subdivision of the State of Texas is pledged in support of the Loan.

### **Section 3. Termination.**

This Agreement shall terminate upon the occurrence of any of the following events:

- (a) The Borrower withdraws its request for the Loan;
- (b) The Loan is not closed on or before the date for such closing specified in the Loan Agreement; or
- (c) The mutual written agreement of the parties hereto.

### **Section 4. Termination upon Legal Prohibition of Relationship.**

Notwithstanding the foregoing, the parties hereto may terminate this Agreement immediately by delivering written notice to the other party:

(a) If, in the opinion of an independent attorney, it is determined that there is applicable legislation, regulations, rules or procedures (collectively referred to herein as a "*Law*") in effect or to become effective as of a date certain, which Law, if or when implemented, would have the effect of subjecting a party hereto to civil or criminal prosecution under the state and/or federal laws, or endangering or jeopardizing the status of a party hereto or any of its affiliates, because of the party's participation herein;

(b) If a party receives notice (the "*Notice*") of an actual or threatened decision, finding or action by any governmental or private agency or court (collectively referred to herein as an "*Action*"), which Action, if or when implemented, would have the effect of subjecting the party to civil or criminal prosecution under the state and/or federal laws, or endangering or jeopardizing the status of the party or any of its affiliates, because of the party's participation herein; or

(c) If a party hereto receives any order (the "*Order*") by a governmental agency or court that the terms of this Agreement are in violation of any Law.

### **Section 5. Effect of Termination.**

Upon the expiration or termination of this Agreement, the parties hereto shall thereafter be automatically relieved and released from all further liabilities and obligations hereunder, except for liabilities and obligations contained herein which are expressly made to extend beyond the term of his Agreement, all of which shall survive the expiration or termination of this Agreement.

### **Section 6. Miscellaneous.**

*Section 6.1. Prior Written Agreements.* This Agreement is without regard to any and all prior written contracts or agreements between the parties hereto regarding any other subject matter and does not modify, amend, ratify, confirm or renew any such other prior contract or agreement between the Parties.

*Section 6.2. Other Services and Exclusion.* Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of any of the parties hereto to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by the parties hereto.

*Section 6.3. Governmental Immunity.* Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the parties hereto nor to create any legal rights or claim on behalf of any additional party. None of the parties hereto waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

*Section 6.4. Amendments and Modifications.* This Agreement may not be amended or modified except in a writing executed by the parties hereto and authorized by their respective governing bodies.

*Section 6.5. Severability.* If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

*Section 6.6. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when all parties hereto have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

*Section 6.7. No Third Party Beneficiaries.* The provisions of this Agreement are and will be for the benefit of the parties hereto only and are not for the benefit of any third party. No third party shall have the right to enforce the provisions hereof.

*Section 6.8. Notice.* All communications provided for herein shall be in writing and shall be deemed to have been given or made when served personally or when deposited in the United States mail. The following are the addresses for all purposes in connection herewith.

Capital Area HFC: Capital Area Housing Finance Corporation  
4101 Parkstone Heights Drive

Suite 280  
Austin, Texas 78746  
Attention: James E. Shaw

Governing Body: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address by giving to the other parties hereto written notice at least ten (10) days prior such change.

*Section 6.9. Governing Law.* This Agreement and the rights and duties of the parties hereto shall be construed and determined in accordance with the laws of the State of Texas. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

*Section 6.10. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date by their officers thereunto duly authorized.

CAPITAL AREA HOUSING FINANCE CORPORATION

By:  
Name: James E. Shaw  
Title: Executive Director

\_\_\_\_\_

By:  
Name:  
Title: