# Arlington County Multifamily Loan Program

## Internal Procedures and Guidelines

## Loan Underwriting through Construction

July 2019

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# I. INTRODUCTION

## Scope of Document

This document describes internal procedures and guidelines for Arlington's multifamily loan program, from the time of underwriting through construction completion. These procedures and guidelines primarily outline the work of the Development Specialists on the Housing Division's Development Team. The Development Specialist assigned to a project serves as the "Project Lead" from the time of loan underwriting through construction completion.

A companion document, *Loan Portfolio Management Procedures and Guidelines*, primarily outlines the work of the Housing Division's Finance and Asset Management Team (FAM). The FAM Team takes over the financial management of loans and the asset management of the projects upon construction completion.

## Affordable Housing Master Plan Goals, Objectives and Policies

In September 2015, the Arlington County Board adopted the Affordable Housing Master Plan (AHMP) which is an element of the Arlington County Comprehensive Plan. The AHMP was developed as the County's long-range vision for addressing housing needs through 2040, and defines the County's housing policy. The AHMP will be reviewed and revised as necessary at least once every five years to account for changing conditions within and beyond the County.
The Affordable Housing Goals and Objectives are used for guidance as the County invests its Affordable Housing Investment Fund (AHIF), Home Investment Partnerships Program (HOME) and Community Development Block Grant (CDBG) funds in housing projects that contain committed affordable units (CAFs). The Affordable Housing Goals, Objectives and Policies of the Affordable Housing Master Plan are listed in Exhibit 1.

## Program Mission and Goals

The AHIF is the County's main financing program for affordable housing development. Since its creation in 1988, AHIF has helped to create the majority of Arlington's more than 8,000 approved affordable rental units that benefit low- and moderate-income households. This revolving loan fund provides incentives for developers through low-interest loans for new construction, acquisition and rehabilitation of affordable housing. Between 1988 and 2018, the County originated more than $340 million in loans for affordable units.

As stated in the adopted AHMP, the County policies for AHIF are as follows:

- 1.1.1 Encourage the construction and preservation of affordable rental housing through land use/zoning policy, financial and technical assistance.
- 1.2.2 Encourage production and preservation of family-sized (e.g. 3+bedroom) moderately-priced ownership units.

- 2.5.3 Maintain a sufficient supply of committed affordable housing that is accessible to persons with physical and sensory disabilities.
- 3.4.2 Ensure financial feasibility in the underwriting of County loans for affordable housing.

## Funding Sources – AHIF, HOME, CDBG

The AHIF is a fund that provides gap financing to developers that preserve or build CAFs in the County. AHIF is the key mechanism through which the County funds the construction and redevelopment of housing affordable to low-income renters. AHIF also supports housing that combines housing and services for vulnerable populations. In addition to AHIF funds, the County receives federal CDBG and HOME funds which are also used for multifamily loans.

AHIF is funded by several sources: developer contributions obtained through the Affordable Housing Ordinance; general fund appropriations; AHIF loan repayments; and a portion of property recordation fees. Between FY2010 and FY2018, AHIF received an average of $9.8 million in local funding annually.

## Notice of Funding Availability (NOFA) Process

In Fiscal Year 2018 the County initiated a new process, a NOFA, for evaluating multifamily loan requests and making recommendations for the fiscal year's pipeline. In contrast to the previous rolling application process, the NOFA allows Housing Division staff to evaluate projects concurrently and rank projects by comparing them on select criteria. The rankings form the staff recommendations for the following fiscal year's pipeline. The recommendations are not a commitment of funds. It is a staff recommendation to continue the negotiations and public process.

As described more thoroughly in Exhibit 2, the NOFA Scoring Guidance, the NOFA scoring process is comprehensive. Staff analyzes the project against many competing goals and objectives such as the AHMP Goals, project risk and opportunity, project readiness and schedule, capital budget standards, proforma and operating budget standards, and developer/sponsor experience.

The County's Housing Division conducts an administrative process to determine the NOFA rankings. The Housing Development, FAM, and Planning and Community Development (PCD) teams score appropriate sections of the applications. The scores are then totaled and averaged across all staff into a final score. Housing staff then presents the recommendations for the pipeline to the County Manager's Office. The recommended applicants are notified and staff meets and debriefs with all applicants who request feedback. There is not an appeals process.

After a positive recommendation, applicants then continue the four- to eight-month loan underwriting process, which includes negotiations with the developer/owner on the financing, and the community process, which includes meetings with various County Board advisory commissions. At the conclusion of the review process, staff makes a recommendation to the

County Board for an allocation of County loan funds.

Upon the completion of the NOFA process, each successful project is assigned a Project Lead to serve as the project manager from the time of underwriting through construction completion. Sections II and III on the following pages describe the loan underwriting and community processes, culminating in County Board consideration. Section IV details development of loan documents and loan closing. The final part, Section V, discusses construction draws through completion.

# II. LOAN UNDERWRITING AND PROJECT REVIEW

The goal of the loan underwriting and project review process is to ensure that the project conforms with the stated affordable housing policies and objectives of the AHMP, meets the criteria of the NOFA Scoring Guidance, and utilizes the minimum allocation from the County to accomplish the goals. The following sections speak broadly to the loan underwriting process, while Exhibit 2—the NOFA Scoring Guidance—provides the County's detailed current loan underwriting criteria. The final sections discuss additional project considerations, when applicable, such as the Federal review for CDBG and HOME funds, tenant relocation, and tenant assistance funds.

## Sources of Funds and Financing Structure

The County's loan funds are leveraged in each multifamily development project by other financing sources, including but not limited to a senior loan, Low Income Housing Tax Credit (LIHTC) equity, developer contribution, and deferred developer fee. The County's loan is subordinate in payment and lien priority to that of the senior lender.

Developers obtain a senior loan for the highest amount for which the project can qualify. The final loan amount is dependent on the project's calculated net operating income (NOI), current interest rates, and the senior lender's underwriting requirements, such as debt coverage ratios. At the time of the County loan application, often up to a year before loan closing, the developer must estimate the senior loan amount based upon reasonable assumptions and interest rate buffers.

Almost all County projects—except acquisition-only projects—are also LIHTC projects. With a LIHTC project, an investor provides equity to the project in exchange for ten years of tax credits against their federal tax liability. The investors' tax credit pricing is dependent on market factors and specifics of the deal, such as timing of equity pay-ins.

There are two LIHTC programs: the competitive 9% program and the non-competitive 4% program, the latter which must be coupled with tax-exempt bond financing. The competitive 9% LIHTC program yields approximately twice the amount of tax credits, and resulting equity, as the 4% LIHTC program. For this reason, the financing gap and resulting County investment is lower per unit for 9% LIHTC projects. The 9% program, however, is highly competitive and not as well suited for some types of projects, such as rehabilitation.

While 9% tax credits and 4% tax credits can't be combined in the same project, a trend since 2015 has been to create a hybrid 9%/4% deal. With the hybrid structure, there are two projects owned by two separate tax credit partnerships and financed separately.

The developer's financing plan should be sound, reasonable, and creative. It should include other non-County sources, such as discounted land, or funds from the Federal Home Loan Bank Affordable Housing Program or the Virginia Housing Trust Fund.

The Project Lead's role is to analyze the proposed financing structure to determine if it is the appropriate one, or if other structures should be considered. In addition, the Project Lead verifies that the developer is using reasonable assumptions and that all financing is calculated accurately.

## Uses of Funds and Capital Budget

The developer's proposed capital budget should be clear, accurate, and thorough. A capital budget is composed of: acquisition costs; construction costs; soft costs (such as architect, engineering, legal, and permitting fees); financing costs; reserves; and the developer's fee.

The Project Lead's role is to examine if acquisition costs are at or below the appraised value, construction costs are reasonable and supported by contractor estimates, and fees and soft costs are reasonable. If the project is requesting or being recommended for Federal funds, the budget should include appropriate associated costs related to Davis-Bacon labor wages, environmental review, the Uniform Relocation Act (URA), and other costs applicable to federal funding.

## Operating Budget

The developer must include a 30-year proforma, which includes annual projections on income, operating expenses, debt service, priority payment fees, and cash flow payments to the County. A Year 15 plan/exit analysis is included if tax credits are being utilized.

The Project Lead ensures that income projections are consistent with rents for targeted households, vacancy rates and other income are reasonable, and operating costs and replacement reserves are consistent with other developments. Priority payment fees, or those paid in advance of the County/developer's cash flow split, should not exceed the amount specified in the NOFA Scoring Guidance. Priority payment fees often include some combination of asset management fees, investor services fees, and/or resident services fees.

## Calculating the Loan Amount (Filling the Gap)

The Project Lead must analyze all the elements described in this chapter—financing structure and sources, capital budget, and operating budget—to calculate the recommended County loan amount. Staff must ensure that the amount of County funds recommended is truly gap financing, without which the project could not go forward. The loan underwriting process is iterative and often involves multiple updates to the financial assumptions. The Project Lead's role is to recommend a loan amount based on the outcomes of the underwriting process. The process involves negotiations as the developer may be resistant to making the financial changes recommended by the Project Lead.

## County Loan Terms

The County's loans are usually structured as cash flow or "residual receipts" loans. The loans are typically 30 years or more, with a below-market interest rate. The developer provides an annual payment to the County based on a portion of residual receipts. Residual receipts are generally defined as the gross revenues minus the sum of the senior lender debt service payments, approved operating expenses, property management fee, and any approved priority payment fees in each fiscal year. The balance of the County loan is due at the end of the term or upon sale or transfer of the property, unless it is refinanced or redeveloped with County Board approval and retains its affordability.

## Additional Project Considerations

This section discusses additional considerations, which may or may not be applicable to a given project, including: Federal review for CDBG and HOME funds; tenant relocation; and tenant assistance funds.

*Federal Compliance Review*

For projects utilizing CDBG or HOME funds, there is an additional Federal compliance review process that is conducted concurrently with the loan underwriting process. The Community Development (CD) staff of the PCD Team of the Housing Division take the lead on the Federal review.

The Federal compliance review takes into consideration several applicable Federal requirements depending on the scope and type of project being undertaken. Federal requirements can include minority / women business outreach, labor standards, equal opportunity, fair housing standards, affirmative marketing, housing accessibility standards, uniform relocation standards, environmental review, site and neighborhood standards and lead-based paint compliance. For HOME projects, the review also consists of a subsidy layering analysis conducted by CD and FAM staff. The review must be completed in advance of the County Board allocation request.

*Tenant Relocation*

Some projects funded by the County's multifamily loan funds involve relocation of some or all existing tenants due to renovation, demolition and new construction, or new affordability restrictions. The County's Relocation Guidelines were established to set standards and provide administrative guidance for owners assisting tenants facing displacement. Owners proposing projects which require County Board approval (i.e. County multifamily loans, site plans, use permits, etc.) require adherence to the Guidelines. Relocation Plans are required for any project subject to the Virginia Residential Landlord and Tenant Act which results in tenant displacement.

The Relocation Coordinator on the PCD Team leads the review and approval of Relocation Plans and adherence to the County's Relocation Guidelines. A draft Relocation Plan is due to the Relocation Coordinator at least four months before a developer plans to issue 120-day Notices to Vacate to the tenants. This is often months or years past the time of County Board allocation of loan funds. Following input from staff and the Tenant-Landlord Commission, the County Manager approves the final Relocation Plan.

*Tenant Assistance Fund (TAF)*

TAFs provide rent assistance to qualified households who might be displaced during a project involving CAFs. TAFs are available to qualified tenants whenever redevelopment, renovation, or acquisition, as part of a CAF project, results in increased rents. If a project is eligible for a TAF, the Project Lead works with the Compliance Officer on the FAM Team to project the amount of County funds needed for the TAF. The Compliance Officer works closely with the developer to obtain information on current households and to determine the number of eligible households. A request of AHIF funds for a TAF is made in conjunction with the County loan request to the County Board.

## Multifamily Loan Advisory Group (MLAG)

The MLAG was established in 2018 as an inter-departmental advisory group to review multifamily loan recommendations in advance of the County Manager's consideration. The MLAG is structured with the following participation, roles, and responsibilities:

- CPHD Housing Division project staff – Lead role; set agenda and provide materials in advance of meetings. Responsible for preparing all materials, organizing and facilitating meetings, and setting agendas.
- Department of Management and Finance (DMF) staff – Advisory role; review staff material and offer suggestions consistent with overall County financial perspective.
- County Attorney's Office (CAO) Assistant County Attorney(s) – Advisory role; review staff material and offer suggestions from County legal perspective.
- Department of Human Services (DHS) staff –Advisory role; review staff material and offer suggestions from County policy perspective (e.g., impacts on housing grants, supportive housing, and other complementary programs).
- Department of Environmental Services (DES) staff – Advisory role; review staff material and offer suggestions from the perspective of sustainability.

The MLAG works as a collaborative committee with the Housing Division staff who formulate the funding recommendations to go to the County Manager. The group meets following the NOFA process (or upon receipt of a funding application for an out-of-cycle, unrelated third-party market acquisition) and again, as needed, before Housing Division staff finalize funding recommendations for projects.

# III. COMMUNITY AND COUNTY BOARD APPROVAL PROCESS

The community process often takes place on a parallel timeframe to the loan underwriting and negotiation process. During the community process, the project will be presented to various Commissions—dependent on the project specifics—related to housing, federal funds, planning, historic review, and tenant relocation. Following a comprehensive community review, the County Board will consider approval of the County loan. The following sections discuss the purview of the various Commissions, each of which are advisory bodies to the County Board, and then the County Board approval process. Exhibit 3 provides bulleted criteria for determining which Commissions must review a given project.

## Housing Commission

All projects seeking County multifamily loan funds must be presented to the Housing Commission for consideration. The Housing Commission is responsible for advising the County Board on housing policy issues and funding allocations. The Project Lead must request that the project be placed on the Housing Commission agenda for two meetings, the first for an informational item and the second for an action item, both in advance of the County Board meeting.

At the first Commission meeting, the Project Lead and the developer applicant will each present an overview of the project and funding request. This is an opportunity for Commissioners to learn the basics of the project, such as location, type and general scope of project, affordability program, and funding request. It is also an opportunity for Commissioners to ask questions and provide input on the proposal.

In between the first and second Housing Commission meeting, the Project Lead works with the Housing Commission chair to schedule a Bricks and Mortar subcommittee meeting to be attended by the Project Lead and developer applicant. The purpose of the subcommittee meeting is to review the detailed financials of the project, including the budget and projected County loan repayment schedule. The subcommittee votes to make a recommendation that will be presented to the full Housing Commission at its second meeting.

At the second full Housing Commission meeting, the Project Lead and the developer applicant each present the project again. The developer applicant emphasizes changes made since the informational item, including those requested by Commissioners, and answers any outstanding questions. The Project Lead presents the County staff's recommendation on the project, including funding level and loan terms. The Bricks and Mortar subcommittee reports out on its meeting. The Housing Commission votes on the project and sends a letter to the County Board. A member of the Housing Commission often presents the vote and answers questions at the County Board meeting.

## Community Development Citizens Advisory Commission (CDCAC)

CDCAC reviews grant and loan requests, evaluates programs and makes recommendations to the County Board for the use of federal CDBG, HOME, and Community Services Block Grant (CSBG) funds. CDCAC also advises on the development of Arlington's five-year Consolidated Plan and the Annual Action Plans to the Department of Housing and Urban Development (HUD). The Annual Action Plan describes the County's planned uses for CDBG and HOME funds. Since some of the County's multifamily loans are comprised of CDBG and/or HOME funds, projects that propose to use either source must be reviewed by CDCAC.

The Project Lead must request that the project be placed on the agenda of one CDCAC meeting in advance of the County Board meeting, preferably the same month as the Housing Commission informational item. Similar to the Housing Commission meeting presentation, the Project Lead presents the basics of the project, including location, type and general scope of project, affordability program, and funding request. Unlike the Housing Commission meetings, the developer applicant does not need to attend. CDCAC votes to make a recommendation and sends a letter to the County Board on the federal funding request.

## Site Plan Review Committee (SPRC) and Planning Commission

Special exception site plan ("site plan") applications allow for site-specific flexibility in development form, use, and density, beyond what is otherwise permitted by-right via the Zoning Ordinance. Most significant private and public-private projects in Arlington are developed through a site plan process that ensures proper reviews, public processes and compliance with applicable policies and ordinances.

The SPRC is a subcommittee of the Planning Commission which meets to discuss each site plan application over typically three or more meetings. The SPRC includes members of the Planning Commission, other County Commissions, impacted Civic Association, and impacted public/private revitalization organizations. The meetings focus on land use and zoning, design and architecture, transportation, open space, and community benefits. The SPRC meetings aim to resolve site plan issues before proposals go to public hearings of the Planning Commission and County Board.

A portion of the projects funded by the County's multifamily loan funds are site plan projects. In the past, the loan underwriting and site plan processes typically ran concurrently, culminating in one County Board meeting for both the site plan and County loan request. Since 2016, several affordable housing projects have opted to go through the site plan process and receive site plan approval in advance of the NOFA process for County loan funds. If a Project Lead has been assigned in advance of the planning process, then he/she can attend one or more SPRC meetings to stay apprised of the main site plan issues.

Site plans ultimately are heard by the Planning Commission in an advertised public hearing with public testimony. The Planning Commission then votes whether or not to recommend approval of the site plan to the County Board.

## Form Based Code Advisory Working Group (FBC AWG)

The FBC AWG includes members from civic associations, Columbia Pike Revitalization Organization (CPRO), several advisory Commissions, developers, and the Zoning Committee of the Planning Commission (ZOCO). The FBC AWG reviews each project within the Columbia Pike Form Based Code (FBC) and the Neighborhoods Form Based Code (N-FBC) for compliance with the applicable code.

A subset of the projects funded by the County's multifamily loan funds are Form Based Code projects. It is recommended that the Project Lead attend the AWG meeting to become familiar with any issues that are discussed. Unlike the multiple SPRC meetings, there is typically one AWG meeting per project.

## Historical Affairs and Landmark Review Board (HALRB)

The Historical Affairs and Landmark Review Board (HALRB) advises the County Board on historic preservation matters. The HALRB nominates properties for local and national designation and also reviews plans for exterior alterations, demolition and new construction in locally-designated Arlington Historic Districts through a Certificate of Appropriateness (CoA) process. The CoA applicants must first go before the Design Review Committee (DRC) – a subcommittee that works with the HALRB. The DRC offers free technical and design advice to the applicant and helps finalize the CoA request before it goes to the HALRB for review.

In several incidences, projects funded by County multifamily loan funds would need to be heard by the HALRB. This includes projects needing a CoA in a locally-designated Arlington Historic Dstrict, projects with properties listed as Essential or Important on the Historic Resources Inventory (HRI), or projects with properties recommended for preservation in a County Board-adopted plan or policy document.

## Tenant-Landlord Commission

The Tenant-Landlord Commission advises the County Board on policy and programs, reviews Relocation Plans, and proposes legislation for the County Board's recommendation to the General Assembly. The Commission includes representatives from each of the following groups: tenants, landlords and public interest (homeowners who do not own rental property).

Some projects funded by the County's multifamily loan funds will involve temporary or permanent relocation of existing tenants. In advance of the County Board's consideration of loan funds, the Relocation Coordinator of the PCD Team provides an overview of these projects to the Tenant-Landlord Commission. If the Commission requests a full information item on the project, then the Project Lead, Relocation Coordinator and the developer applicant will coordinate attendance.

The Tenant-Landlord Commission reviews a Relocation Plan in advance of the developer's issuance of 120-day Notices to Vacate in order to make a recommendation to staff for approval. Depending on the project timeline, review of the Relocation Plan often takes place months or even years post County Board approval of the loan funds. At that time, the Relocation Coordinator works with the developer to schedule two Tenant-Landlord Commission meetings: one to introduce the project and the draft Relocation Plan and one for the Commission to consider approval of the Relocation Plan.

## County Board

Once the loan underwriting process is nearing completion, and all appropriate Commission/community meetings have been scheduled, the multifamily loan request is ready to be considered by the County Board. Oftentimes, outside timelines influence the month in which the project must go to the County Board meeting. This includes VHDA’s 9% LIHTC application deadline or a Purchase and Sale Agreement between the developer and a third-party seller. Once the month is determined, the Project Lead submits a County Board Meeting Report Form via the OnBase “BRASS” system, which will create a County Board agenda item.

The Project Lead drafts the County Board report per the standard template. The report should provide relevant background information and should include discussion of the following:

- the affordable housing program;
- the Affordable Housing Master Plan;
- tenant relocation and Tenant Assistance Fund (if relevant);
- development budget;
- financing package;
- County loan funds requested;
- recommended County loan terms and conditions;
- anticipated timeline;
- estimated number of students generated by the development;
- public engagement process; and
- fiscal impact

The draft County Board report is reviewed and approved by the Development Supervisor, Housing Division Director, CPHD Department Director, the Department of Management and Finance, the County Attorney’s Office, and the County Manager’s Office. There is a schedule of timelines for each department’s review which is published by the County Manager’s Office. The Project Lead’s role is to shepherd the review of the County Board report through the various departments.

The Project Lead presents a brief summary of the project and any issues at the County Manager’s Agenda Review meeting, typically approximately a week before the County Board meeting. The County Manager discusses whether the item should be on the consent or regular agenda. If the item is placed on the regular agenda, the Project Lead is typically the lead presenter of a PowerPoint presentation to the County Board, and is supported on the dais by the Development Supervisor and often the Housing Director.

# IV. LOAN DOCUMENTS AND CLOSING

The type of multifamily project dictates whether the loan closing occurs shortly after the initial County Board approval or whether it takes place at a later date, following a second County Board approval. Acquisition-only projects, some smaller scope rehabilitation projects, and some 4% LIHTC projects can go to the County Board once for approval of both the County loan allocation and the County loan documents. For 9% LIHTC projects and some 4% LIHTC projects, there is a period of time between the initial County Board approval of the allocation of funds and the construction closing. In those instances, the County loan documents go to the County Board for approval at a later date, in advance of construction closing.

## Building Permits

Typically following County Board allocation of funds and VHDA's award of competitive LIHTC, the developer's design team embarks on the construction drawing and building permit processes. The process for obtaining building permits can take approximately six to nine months or more, depending on the complexity of the project and the number of rounds of submissions needed. The building permit process predominately involves the developer, its design team, and County plan reviewers from multiple departments. However, final building permits are a condition to construction closing by the senior lender, the investor, and the County as a lender. As a result, the Project Lead must stay apprised of any major issues that develop during the review process, especially those that can delay issuance of building permits and impact the project's closing schedule. It is helpful for the Project Lead to attend the pre-permit meeting that is convened by Zoning Division staff at the beginning of the process to explain the County's role and investment as a lender. For site plan and FBC projects, a number of conditions must be met in advance of the County's issuance of building permits. It can be helpful for the Project Lead to attend meetings from time to time between the developer, its design team, and the County reviewers to discuss status of permit review and satisfaction of conditions.

## Drafting and Approval of County Loan Documents

The Project Lead completes a County Attorney's Office (CAO) Checklist to provide detailed information on the negotiated loan terms and conditions. The CAO drafts the County loan documents, which include the Loan Agreement, Promissory Note, Deed of Trust, Deed of Declaration of Covenants, Right of First Refusal Agreement, Subordination Agreement, and any other transaction-specific documents. Exhibit 4 distinguishes business versus legal provisions of the documents.

The Project Lead reviews the draft documents for accuracy of the transaction and negotiated terms. The draft documents are then circulated to the developer, senior lender, investor and each party's attorneys for review and comment. The document drafting process is iterative and typically involves several rounds of drafts and review. The CAO and the Project Lead coordinate responses to the comments, with the CAO focusing on legal comments and the Project Lead on the business term comments.

When the loan documents are in substantially final form, meaning all comments and issues have been resolved by all parties, the documents are ready for County Board consideration. If the loan documents are being considered in conjunction with the allocation of funds, then the loan documents are attached in substantially final form to one County Board report. The report includes a section giving an overview of the main business and legal terms of the documents. If the loan documents are being considered at a second County Board meeting, then the County Board report provides an update on the project developments, timeline and financials, in addition to including the loan documents.

The County Board consideration of loan documents is typically approved on the consent agenda. In some instances, a community or County Board member requests that the item be placed on the regular agenda in order to discuss the project publicly.

## Closing Calls and Coordination

Oftentimes even in advance of loan document drafting, closing calls begin for the project. They are convened by either the developer or its attorney and include business and legal representatives from each party involved in the transaction, including the Project Lead and Assistant County Attorney. The closing calls, which often occur weekly until closing, are an opportunity to coordinate logistics, due diligence items, and document drafting and review. It is also a chance to work through any remaining business or legal issues.

## Pre-Disbursement and Closing Conditions

A section of the County's loan agreement lists the conditions to closing and disbursement of funds. These items include, but are not limited to: evidence of insurance; title insurance policy; appraisal; environmental reports; purchase and sale agreement; construction contract; building permits; legal opinion; settlement sheet; and all executed County, senior lender, developer, and investor documents. While some of these items such as the appraisal, environmental reports, and purchase and sale agreement are obtained earlier in the underwriting process, the majority are not completed until the week of closing.

Exhibit 5 is a sample County closing checklist, which should be adapted by the Project Lead to include the project specifics. This checklist should be shared with the developer contact to help track the County's closing requirements. Closing cannot be authorized until all pre-disbursement and closing conditions have been met.

## Closing Draw Review

Depending on the project structure and draw schedule, all or a portion of the County loan funds will be disbursed at closing. For acquisition-only projects, all funds are disbursed at closing, but LIHTC projects may be disbursed over multiple draws. The developer must submit a closing draw package for review and approval by the Project Lead. The closing draw package will include a form requesting the County funds by budget line item and back-up documentation/invoices for each expense. County loan funds cannot be used to fund legal expenses, except for the County's outside counsel fees.

## Closing

In addition to tracking the County Closing Checklist, there are several important items that the Project Lead must coordinate internally and externally in advance of closing. These include the execution of documents, funds/accounting/wiring approvals, drafting of closing instructions, and collation of the closing package.

The CAO sends the final document signature pages to the developer and the closing distribution list, and the document execution process begins. The County Attorney and County trustees first sign all County loan documents that require their signatures. Once the CAO has signed the documents, the Project Lead requests the County Manager's signature via a cover letter to the County Manager, Chief of Staff and Deputy County Manager assigned to the Housing Division. Concurrently, the developer, senior lender, and investor sign all County documents that require their signatures and deliver the signature pages to the Project Lead.

Once the County loan agreement has been fully executed by all parties, the FAM Team finalizes the funds/accounting/wiring approvals package (the "manual warrant"). The Department of Management and Finance (DMF) and the Treasurer's Office review and sign this package.

The Project Lead drafts a closing instructions letter to the title company or closing agent managing the closing. The letter, based upon a general template, explains the amount of County funds that will be wired into escrow, the escrow agent's conditions to closing, and the order of all documents to be recorded. It also details requirements related to delivery of the final title policy post-closing and the return of original recorded documents. The CAO or outside counsel (if contracted for the project) reviews the closing instructions letter, and the Housing Director signs the final version. Exhibit 6 is a sample closing instruction letter.

The Project Lead assembles the closing package and arranges for its delivery to the title company or escrow agent handling the closing. The closing package, which should arrive the day before closing, includes the signed closing instruction letter, all fully-executed documents that will be recorded, and UCC-1 Financing Statements (which are drafted by the CAO). The escrow agent reviews the closing instruction letter, signs it, and emails it to the Project Lead.

The Treasurer's Office should send the wire of County funds to the title company or escrow agent the morning of closing. Oftentimes, the remaining fully-executed documents of the developer, senior lender, and investor will be circulated via email the day of closing. Once all executed documents have arrived via email and the Project Lead has ensured all pre-disbursement funding conditions have been met, the Housing Director or designee will authorize closing via email to all parties. Once all parties have authorized closing, the escrow agent releases the funds from escrow, sends out the wires, and records documents through the County Court's Land Records Division. At this point, the project has closed.

## Loan Filing

After a project has closed, the Project Lead ensures that the electronic and hard copy originals of all County loan documents are properly filed. The executed originals are placed in the locked file cabinet in the Housing Division's file room. A hard copy is given to the Asset Manager of the FAM Team. Electronic copies are saved in both the Development Team and the FAM Team's electronic project files.

## ATRACK

The Arlington County Apartment Tracker (ATRACK) is a custom internet-based system that allows the County to track all apartment complexes in the County, all CAF projects, and all County multifamily loans. The Project Lead and Asset Manager work together to set up new CAF projects and/or new financing after closing. Once the project is listed, the Asset Manager reviews and updates the financial information including interest accruals, repayments, changes to loan terms, etc. ATRACK calculates and provides interest accruals, loan balances, number of affordable units and other comprehensive reports that staff can use for analysis or to provide to internal or external stakeholders.

# V. CONSTRUCTION THROUGH COMPLETION

Construction typically begins immediately after closing to keep a project on schedule. This is especially important for 9% LIHTC projects which have a “placed in service” deadline. The Project Lead’s main responsibilities during construction are to: review, approve and coordinate construction draws of County loan funds; monitor construction through the developer’s progress reports; and stay apprised of any major issues that develop during the Certificate of Occupancy approval process.

## Construction Draws

While some projects draw all County funds at closing since there are enough eligible expenses, other projects continue to draw County funds during construction. The developer provides a construction draw schedule at closing which estimates monthly construction and soft costs and delineates the estimated source of funding. Since County loan funds usually accrue zero interest during construction, it saves the project to draw those loan funds first.

The developer submits a monthly draw package to the Project Lead, senior lender, and investor. The draw package includes the architect-approved contractor requisition and documentation/ invoices of all soft costs for which funding is requested.

The Project Lead reviews and approves the monthly draw packages that include requests for County loan funds and tracks the amount drawn by month. The Project Lead orders a title update for the anticipated date of funding and coordinates with the FAM Team to produce a manual warrant package. The FAM Team coordinates the review and approval of the manual warrant, which culminates with the Treasurer’s Office sending the wire. Lastly, the Project Lead coordinates with the Asset Manager to enter County loan disbursements into ATRACK.

## Construction Progress

The developer is responsible for sending periodic construction progress reports. These reports provide updates on construction milestones, upcoming work, schedule, change orders, and the construction budget. The Project Lead stays aware of any major issue related to construction, budget, and schedule. From time to time, it may be necessary for the Project Lead to assist in convening meetings between the developer, its construction/design team, and County staff to resolve issues during construction.

## Construction Completion and Certificates of Occupancy

Typically, within six to nine months of construction completion, the developer begins to convene meetings with inspections staff of the Zoning Division, Inspection Services Division, and Department of Environmental Services (DES) in anticipation of obtaining Certificates of Occupancy (CO’s). It is helpful for the Project Lead to attend these meetings from time to time to stay current on progress and any potential issues.

For site plan and FBC projects, a number of conditions must be met in advance of the County's issuance of CO's. These conditions can include but are not limited to: installing landscape elements, public art, and bicycle parking; completing infrastructure and streetscape improvements; and recordation of any easements. There is often a long checklist of these conditions that must be met before the CO's can be issued, so regular meetings between the developer and County Zoning, Inspections and DES inspections staff are essential. For 9% LIHTC projects with firm "placed in service" deadlines, this coordination is even more crucial. For this reason, the Project Lead must stay current on issues throughout construction to ensure an on-time completion.

Once construction has completed and CO's have been issued, the FAM Team takes over the project. FAM's Compliance Officer will work with the developer to ensure that the units are leased to eligible households and provide annual compliance reports. The Asset Manager reviews and approves annual budgets and receives annual loan payments. The Arlington County Multifamily Loan Portfolio Management Procedures and Guidelines detail the FAM Team's work.

# EXHIBIT 1:
# Affordable Housing Goals, Objectives and Policies of the Affordable Housing Master Plan

GOAL 1: Arlington County shall have an adequate supply of housing available to meet community needs.

Objective 1.1: Produce and preserve a sufficient supply of affordable rental housing to meet current and future needs.

*By 2040, 17.7% of the County's housing stock should be affordable rentals to meet the needs of renter households with incomes at or below 60% AMI.*

1.1.1 Encourage the construction and preservation of affordable rental housing through land use/zoning policy, financial and technical assistance.
1.1.2 Prevent the loss of committed affordable housing.
1.1.3 Make every reasonable effort to prevent the loss of market-rate affordable rental housing.
1.1.4 Encourage and incentivize the distribution of affordable housing throughout the County.
1.1.5 Encourage affordability periods of 60 years or more for committed affordable rental projects where the County provides financial assistance.
1.1.6 Incentivize affordability below 60% AMI in committed affordable rental projects.
1.1.7 Remove barriers to the production of moderately-priced rental housing, including non-subsidized housing.
1.1.8 Encourage production and preservation of family-sized (e.g. 3+ bedroom) market-rate and committed affordable rental units.
1.1.9 Produce committed affordable rental units within transit corridors consistent with the County's adopted land use plans and policies.
1.1.10 Explore flexibility in housing types and residential uses in single-family neighborhoods.

Objective 1.2: Produce and preserve a sufficient supply of affordable ownership housing to meet future needs.

*2,700 ownership units affordable to households between 80% and 120% AMI will need to be created by 2040 to fulfill the forecasted need.*

1.2.1 Incentivize the production of moderately-priced ownership housing through land use and zoning policy.

1.2.2 Encourage production and preservation of family-sized (e.g. 3+bedroom) moderately-priced ownership units.

1.2.3 Explore flexibility in housing types and residential uses in single-family neighborhoods.

GOAL 2: Arlington County shall ensure that all segments of the community have access to housing.

### Objective 2.1: Affirmatively further fair housing

2.1.1 Eliminate housing discrimination.
2.1.2 Allow for flexibility in the definitions of family and household for occupancy purposes.

### Objective 2.2: Ensure low- and moderate-income individuals and families can access housing.

2.2.1 Enable access to housing through direct rental assistance for households with incomes below 40 percent of the area median income.
2.2.2 Avoid displacement of low-income residents out of the community during construction and redevelopment of CAF projects.
2.2.3 For private projects, encourage owners/developers to provide assistance to displaced tenants and provide County assistance to affected tenants.
2.2.4 Incentivize landlords to provide housing to individuals and families with leasing barriers.
2.2.5 Provide assistance to create access to ownership housing for moderate-income first-time homebuyers.
2.2.6 Provide preference to Arlington residents and workers in leasing committed affordable housing units and home-buyer assistance resources.

### Objective 2.3: Prevent and end homelessness

2.3.1 Use the best practice approach of housing first, which places people experiencing homelessness into housing as rapidly as possible and provides wrap around services to help them maintain their housing.
2.3.2 Provide permanent supportive housing (PSH) for persons with disabilities who are homeless or at-risk of homelessness.
2.3.3 Prevent homelessness through safety net supports and social services to enable residents to maintain their housing.

### Objective 2.4: Enable Arlington residents to age in the community.

2.4.1 Provide support so that older adults can age in place or age in community through a combination of affordable and accessible housing with linkages to services.
2.4.2 Incorporate universal design principles in new and rehabilitated housing to facilitate access for aging adults.

### Objective 2.5: Enable persons with disabilities to live as independently as possible in the community.

*By 2040 10% of all CAFs will be accessible to and occupied by person with disabilities.*

2.5.1 Provide support so that individuals with disabilities can live in community through a combination of affordable and accessible housing with linkages to services.

2.5.2 Use Committed Affordable (CAF) units to provide permanent supportive housing (PSH) for persons with disabilities.

2.5.3 Maintain a sufficient supply of committed affordable housing that are accessible for persons with physical and sensory disabilities.

## GOAL 3: Arlington County shall ensure that its housing efforts contribute to a sustainable community.

### Objective 3.1: Ensure that all housing is safe and code compliant.

3.1.1 Fully enforce all codes related to building structure, occupancy and maintenance.

3.1.2 Ensure that all committed affordable housing is code compliant.

3.1.3 Foster greater awareness and understanding of tenant and landlord rights and responsibilities, and housing safety.

3.1.4 Provide education and financial assistance to landlords and homeowners for the maintenance of low- and moderate-income housing.

### Objective 3.2: Promote affordable housing close to transit.

3.2.1 Coordinate transportation, land use and Affordable Housing Master Planning efforts.

3.2.2 Ensure that committed affordable rental units have high levels of access to transportation options consistent with the Master Transportation Plan and transit-oriented development.

### Objective 3.3: Ensure environmental sustainability practices are incorporated into affordable housing developments.

3.3.1 Encourage energy efficiency in new and renovated affordable housing to advance the goals of the Community Energy Plan (CEP).

3.3.2 Encourage water conservation in affordable housing.

3.3.3 Encourage the conservation of natural resources by reducing or eliminating waste throughout the building’s entire life cycle, including the development phase, the usage phase and the building’s end-of-life stage.

3.3.4 Provide education to landlords, tenants and homeowners on energy efficiency, water conservation, recycling, and waste reduction activities.

### Objective 3.4: Promote long term affordability and financial feasibility of Committed Affordable Units.

3.4.1 Implement affordability restrictions for the maximum length of time that is feasible on a project-by-project basis.

3.4.2 Ensure financial feasibility in the underwriting of County loans for affordable housing.

### Objective 3.5: Ensure that the County's affordable housing goals are integrated into other County plans and policies where appropriate.

3.5.1 Integrate affordable housing goals and policies into County sector plans, economic development strategies, the Master Transportation Plan and other County planning efforts.

3.5.2 Consider affordable housing needs and goals when planning for major capital investment in new or redeveloping existing major community facilities, taking into account the neighborhood context. The County Board does not support the placement of stand-alone affordable housing in officially designated parks or existing natural areas.

3.5.3 Develop work plans and metrics to ensure implementation of affordable housing goals and to evaluate the success of implementation effort.

# EXHIBIT 2:
# NOFA FY 2020 SCORING GUIDANCE

**Scoring Guidance for the Fiscal Year 2020 Arlington County Notice of Funding Availability (NOFA) for County Loan Funds**

**County staff, in its sole discretion, may recommend any combination of Affordable Housing Investment Fund (AHIF), Community Development Block Grant (CDBG), or HOME Investment Partnership (HOME) sources (or other sources not specifically mentioned herein) for funding. Only applications that propose feasible use of Federal HOME and/or CDBG funds, as determined by staff to be feasible according to timing and other requirements as noted in the application, will be eligible for funding through this NOFA process.** The use of Federal CDBG and HOME funds require adherence to Federal compliance and only certain projects are eligible and/or feasible. Only projects that are eligible for use of Federal funds will be able to utilize any additional local loan funds that may be available.

| **POLICY - 40% Weight** | | | |
|---|---|---|---|
| **Category** | **Guidance** | **Max Points Available** | **AHMP #** |
| **SUPPLY** | | **84** | **1** |
| Commitment Period | Highest Points: 75+ years. | 0 to 3 | 1.1.5 |
| Units below 60% AMI | Highest Points: 25% or more of CAFS at 50% AMI or below. | 0 to 10 | 1.1.6 |
| Family-Sized Units or Senior Housing | Highest Points: 50% or more of CAFS are family sized, 10% or more of CAFS are 3+ bedrooms, or project is age-restricted senior housing. | 0 to 8 | 1.1.8, 2.4.1 |
| Units in Transit Corridor | Highest Points: Close proximity to transit. | 0 to 3 | 1.1.9, 3.2.2 |
| MARK/CAF Preservation | Highest Points: Project contains 30 or more MARKS, especially MARKS for-sale on the open market, or contains 30 or more existing CAFs that will expire in 5 years or less. Up to five points will be given to developments that contain more than one but less than 30 MARKS or 30 CAFs expiring in 5 years or less. | 0 to 15 | 1.1.2,1.1.3 |
| Future Development Opportunity | Highest Points: Provides future infill/redevelopment opportunity. | 0 to 5 | 1.1 |
| Time-Sensitivity | Highest Points: Urgent capital needs and/or time-limited funding at risk. | 0 to 10 | 1.1 |
| Consistency with Comprehensive Plan Goals, Sector Plans, and Small Area Plans | Highest Points: Project is consistent with existing Comprehensive Plan Goals, Sector Plans, and Small Area Plans. If development is located in an area that does not have any of the above, the development is consistent with the General Land Use Plan. | 0 to 5 | County Land Use Policies |
| Geographic Distribution | Tier 1 - Located in the metro corridors as defined on the General Land Use Plan or is within 1/4 mile of Lee Hwy. | 25 | 1.1.4, 3.2 |
| | Tier 2 - Located in a census tract that is below the regional average poverty rate and is not in the metro corridors or within 1/4 mile of Lee Hwy. | 20 | |
| | Tier 3 - Located in a census tract with 1x to 2x the regional average poverty rate and is not in the metro corridors or 1/4 mile of Lee Hwy. | 15 | |

| | | | |
|---|---|---|---|
| | Tier 4 - Located in a census tract with 2x to 3x the regional average poverty rate and is not in the metro corridors or within 1/4 mile of Lee Hwy. | 10 | |
| | Tier 5 - Located in a census tract that has 3x or greater the regional poverty rate at any point over the past three years. | 0 | |
| | *Notes: Developments located in Tiers 4 and 5 that are mixed-income developments containing at least 40% of units as unrestricted and/or are located in a* Designated Qualified Opportunity Zone *will receive the next highest Tier points. Applications that contain existing CAFS will receive full points.* | | |
| **ACCESS** | | **10** | **2** |
| Permanent Supportive Housing Units | Highest Points: 10% or more of CAFS are PSH. | 0 to 5 | 2.3.2, 2.5.2 |
| Accessible Units | Highest Points: 10% or more of CAFS are accessible as per ADA and ANSI A117.1 with Type A units and roll-in showers, to include 2% of units being accessible for people with visual or hearing impairments. | 0 to 3 | 2.5.3 |
| Accessible Placement | Highest Points: Leases for Type-A accessible units will have clauses requiring that any tenant household which does not include a person with a disability will be required to transfer to another unit, of the same size and in the same property, if available, if an application is accepted from another household which does have a person or persons who would make use of the accessible features of the Type A unit. Reasonable transfer costs resulting from such a move would be paid by the developer/owner. | 0 or 2 | 2.5.3 |
| **SUSTAINABILITY** | | **16** | **3** |
| Industry Best Practices | Highest Points: Project pursuing LEED Gold or EarthCraft Gold certification with ongoing energy use tracking. | 0 to 2 | 3.3 |
| Renewable Energy | Highest Points: Renewable energy, such as solar, installed to supply 25% or more of the building's anticipated annual energy use. Must have a minimum of 5% of renewable energy installed to receive points. | 0 to 4 | 3.3 |
| Building Innovation | Highest Points: Projects pursuing innovative, industry recognized "green" building standards such as, but not limited to, Net Zero Energy Certification, Net Zero Energy Ready Certification, Zero Carbon Certification, and Passive House. Utilization of a green or other workforce development organization that provides employment opportunities for low-income residents. | 0 to 5 | 3.3 |
| Digital Equity | Highest Points: Project proposing to provide in-unit broadband internet or Wi-Fi internet service to all units free-of-charge. | 0 to 5 | |
| ***Total Potential Score - Policy*** | | ***110*** | |
| ***Weight*** | | ***40%*** | |
| ***Total Maximum Final Score - Policy*** | | ***44*** | |

| PROJECT EXPERIENCE & READINESS - 20% Weight | | |
|---|---|---|
| **Category** | **Guidance** | **Max Points Available** |
| **TEAM EXPERIENCE** | | **55** |
| Development Experience | Highest Points: Demonstrated record of success working with County or other jurisdictions including: taking projects through a community process and obtaining entitlement approvals; applying for and receiving Low Income Housing Tax Credits and Historic Tax Credits (if applicable); applying for and receiving federal funds (if applicable); closing on debt and equity financing; history of repayment; and obtaining building permits. | 0 to 13 |
| Design Team Sustainability Experience | Highest Points: Design team with extensive experience in green design and construction, including one of the following: LEED Platinum certification, EarthCraft Platinum Certification, Net Zero Energy Ready Certification, Net Zero Energy Certification, Zero Carbon Certification, Passive House Certification. | 0 to 2 |
| Project Completions | Highest Points: Proven track record of completing projects on budget and on schedule. | 0 to 10 |
| Property Management | Highest Points: Proven track record of compliance with affordability and physical condition requirements and overall tenant satisfaction. | 0 to 10 |
| Partnering with Service Providers | Highest Points: Experience partnering with DHS, mental health service providers, and other service providers and/or plan for delivering services. | 0 to 10 |
| Fiscal & Organizational Health | Highest Points: Applicant is fiscally and organizationally sound. Applicant supplies latest audited financial statements or equivalent. | 0 to 10 |
| **READINESS** | | **45** |
| Site Control | Highest Points: Currently owns property or has an executed Letter of Intent with the seller or a Purchase Contract. | 0 to 15 |
| Planning, Design, and Construction Process | Highest Points: Architectural concept plans prepared; site plan or use permit process identified and discussed with County Planning staff; construction estimates prepared. | 0 to 10 |
| Timeline & Schedule | Highest Points: Demonstrates a feasible plan with major milestones accomplished within schedule requirements. Includes plan for due diligence (appraisal, market study, environmental) and relocation strategy (if applicable). | 0 to 10 |
| Public Participation Process | Highest Points: Civic association consulted, appropriate schedule for public participation process. | 0 to 10 |
| ***Total Potential Score - Project Experience and Readiness*** | | **100** |
| ***Weight*** | | **20%** |
| ***Total Maximum Final Score - Project Experience and Readiness*** | | **20** |

| BUDGET - 40% Weight | | |
|---|---|---|
| **Category** | **Guidance** | **Max Points Available** |
| **CAPITAL BUDGET** | | **60** |
| Sources of Funds | Highest Points*:* Financing plan is sound, reasonable, creative and includes competitive and/or outside sources (excluding tax credit equity) such as the Federal Home Loan Bank Affordable Housing Program and the Virginia Housing Trust Fund. | 0 to 5 |
| Financing Gap | Highest Points: County funds request demonstrates minimum gap financing needed with: reasonable tax credit assumptions; maximized first mortgage; and reasonable debt coverage and interest rate assumptions. Mortgage source is compatible with County loan terms. | 0 to 5 |
| Leveraging | Highest Points: Leverage ratio that is higher than 1:5 (County funds to outside funds). | 0 to 10 |
| Uses of Funds | Highest Points: Budget is clear, accurate, and thorough. Project includes discounted land and/or acquisition costs are below appraised value. If requesting Federal funds, the budget includes appropriate associated costs such as Davis Bacon, Environmental Assessment, Relocation, and other costs applicable to federal funding. | 0 to 5 |
| Construction and Soft Costs | Highest Points: Construction costs are reasonable and supported by contractor estimates; fees and soft costs are reasonable. | 0 to 5 |
| County Loan Fund Cost per Unit | Highest Points: Less than $85,000/unit. Consideration for exceeding $85,000/unit will be given to projects that include a 3rd party land purchase, are within the metro corridor as defined in General Land Use Plan, serve very low-income or special needs households, or use concrete and steel construction. | 0 to 15 |
| Amount of Developer Fee & Percent Deferred | Highest Points: Fee within VHDA guidelines (if applicable) and 50% is deferred. The deferred developer fee is repaid within the required time window. *Note: For 4% low income housing tax credit projects, the developer fee cannot exceed what is claimed in eligible basis.* | 0 to 5 |
| Developer Contribution | Highest Points: Developer Contribution equals at least 10% of County loan request. Fifty percent (50%) may come from a seller note. | 0 to 10 |
| **OPERATING BUDGET** | | **40** |
| Proforma | Highest Points: A 30-year proforma in active excel spreadsheet format is included with reasonable assumptions and escalation factors; income consistently exceeds expenses and mortgage payments. A Year 15 plan/exit analysis is included if tax credits are being utilized. | 0 to 5 |
| Income | Highest Points: Income projections are consistent with rents for targeted households; vacancy rates and other income are reasonable. | 0 to 5 |
| Operating Costs | Highest Points: Consistent with other recent developments. | 0 to 5 |
| Priority Payment Fees & Replacement Reserves | Highest Points: Priority Payment Fees are no more than $200/unit. Replacement Reserves are adequate and reasonable and consistent with County loan policy. | 0 to 5 |
| Residual Receipt Payments | Highest Points: County loan payment equal to at least 50% of residual receipts, which is calculated as remaining cash flow following payment of senior debt service, operating expenses, replacement reserves and priority payment fees. | 0 to 10 |
| Repayment Schedule | Highest Points: Loan crests within 15 years (or reasonable plan for repayment of the loan is proposed). County loan repayments are maximized to the extent feasible. County receives repayment starting the first year of operation. | 0 to 10 |
| ***Total Potential Score - Budget*** | | **100** |
| ***Weight*** | | **40%** |
| ***Total Maximum Final Score - Budget*** | | **40** |

# EXHIBIT 3:
# Criteria for Determining Commission Review

**Housing Commission**

***All multifamily loan projects are reviewed by the Housing Commission***

**Community Development Citizens Advisory Commission (CDCAC)**

- Project is recommended to receive CDBG or HOME funds and included in the Annual Action Plan

**Planning Commission**

- Project has filed a special exception “site plan” application
- Project has filed a special exception “use permit” application

**Site Plan Review Committee (SPRC) of the Planning Commission**

- Project has filed a special exception “site plan” application

**Form Based Code Advisory Working Group (FBC AWG)**

- Project has filed a Columbia Pike Form Based Code application
- Project has filed a Neighborhood Form Based Code application

**Historical Affairs and Landmark Review Board (HALRB)**

- Proposed project is requesting exterior alterations, demolition or new construction in a locally-designated Arlington Historic District and needs a Certificate of Appropriateness (CoA)
- Proposed project involves properties listed as Essential or Important on the Historic Resources Inventory (HRI)

- Proposed project involves properties that are recommended for preservation in a County Board-adopted plan or policy document

**Tenant-Landlord Commission**

- Project requires Relocation Plan due to temporary or permanent relocation of existing tenants

# EXHIBIT 4:
# Business and Legal Provisions of County Multifamily Loan Agreements

| Section | Business | Legal |
|---|---|---|
| **Recitals** | Project Lead to describe the negotiated transaction to CAO. | CAO to draft recitals based on the negotiated transaction. |
| **Article I - Definitions** | Definitions must convey business terms, as confirmed by Project Lead. | CAO works with Project Lead to ensure that definitions are accurate and reflective of the business deal, as well as Housing Division underwriting, compliance/monitoring, and asset management procedures. |
| **Article II - Loan Provisions** | 2.01 County Loan<br>2.02 Term of County Loan<br>2.03 Interest on the County Loan<br>2.05 Repayment of County Loan<br>2.07 Required Use of County Funds<br>2.08 County Loan Disbursements | 2.04 Security<br>2.06 Closing Conditions<br>2.09 Subordination of County loans<br>2.10 Nonrecourse |
| **Article III - Construction** | 3.01 Scope of Construction<br>3.02 Construction Responsibilities<br>3.03 Commencement of Construction Project<br>3.04 Completion of Construction Project<br>3.05 Cost of Construction<br>3.06<br>3.07 Arlington County and Other Governmental Agency Permits<br>3.08 Fees<br>3.09<br>3.10 Local, State, and Federal Laws; Environmental Mitigation Measures<br>3.11 Progress Reports<br>3.12 Inspections<br>3.13 Insurance Requirements During Construction | |

| | | |
|---|---|---|
| | 3.14 Non-Discrimination<br>3.15 Cost Savings | |
| **Article IV – Affordable Housing Plan Covenants** | 4.01 General Covenant<br>4.02 Apartment Unit Designations<br>4.03 Occupancy and Affordability Covenants<br>4.04 Tenants, Income Certification and Reporting<br>4.05 Miscellaneous Restrictions, Covenants and Terms | |
| **Article V – Additional Covenants** | 5.02 Insurance Requirements<br>5.05 Property Condition<br>5.06 Release of Hazardous Materials<br>5.07 Management<br>5.08 Commingling<br>5.09 Additional Debt<br>5.10 County's Role as Lender<br>5.11 Subordinate Loan Payments<br>5.12 Developer Fee Payments<br>5.13<br>5.14 Payments into Reserves<br>5.15 Unsecured Loan Payments<br>5.16 Appraisals | 5.01 Compliance with Laws<br>5.03 Restriction of Assignment and Transfer by Borrower<br>5.04 County Board Right of First Refusal (ROFR) |
| **Article VI – Community Development Requirements and Conditions** | 6.01 General Covenant<br>6.02 Administrative Requirements<br>6.03 General Conditions<br>6.04 Environmental Conditions<br>6.05 Personnel and Participant Conditions<br>6.06 Relocation, Real Property Acquisition and One-for-One Housing Replacement | |
| **Article VII – Representations and Warranties of the Borrower** | 7.09 Financial Statements<br>7.10 Loan Proceeds and Adequacy<br>7.11 Reasonableness of Fees<br>7.12 Accuracy<br>7.13 Tax Liability<br>7.14 Permits<br>7.15 No Hazardous Materials<br>7.16 Plans and Specifications | 7.01 Organization<br>7.02 Authority of the Borrower<br>7.03 Authority of Persons Executing Documents<br>7.04 Valid Binding Agreements<br>7.05 No Breach of Law or Agreement<br>7.06 Compliance with Laws; Consents and Approvals<br>7.07 Pending Proceedings |

| | | |
|---|---|---|
| | | 7.08 Title to Property; Taxes and Assessments<br>7.17 Survival of Representations and Warranties |
| **Article VIII – Default and Termination** | | 8.01 Events of Default<br>8.02 Notice, Cure Period<br>8.03 Remedies<br>8.04 Rights and Remedies are Cumulative |
| **Article IX – Miscellaneous Provisions** | | 9.01 Notices, Demands, and Communications Between Parties<br>9.02 Relationship of Parties<br>9.03 Interpretation<br>9.04 Indemnification<br>9.05 Non-Liability of Officials, Employees and Agents<br>9.06 No Third-Party Beneficiaries<br>9.07 Parties Bound<br>9.08 Severability<br>9.09 Governing Law<br>9.10 Liability of the County<br>9.11 Exhibits<br>9.12 Entire Agreement, Waivers, and Amendments<br>9.13 Time of the Essence<br>9.14 Language Construction<br>9.15 Counterparts<br>9.16 No Waiver of Sovereign Immunity by County |

| | | |
|---|---|---|
| **Promissory Note** | 1 Payments | 2 Defaults and Remedies<br>3 Miscellaneous |
| **Deed of Trust** | | Article 1 - Incorporation of Recitals; Secured Indebtedness; Definitions; Granting Clauses<br>Article 2 - Representations, Warranties and Covenants<br>Article 3 - Assignment of Rents and Leases<br>Article 4 - Default<br>Article 5 - Remedies<br>Article 6 – Miscellaneous |

| | | |
|---|---|---|
| | | |
| **County Restrictive Covenants** | 1 Income Eligibility and Occupancy Requirements for Income Restricted Units<br>2 Accessible Housing Units<br>3 Tenant Qualifications<br>4 Rental Rate Requirements<br>5 Required Acceptance of Certain Grants<br>6 Utility Allowance<br>7 Utility Usage Information<br>8 Leases<br>9 Management<br>10 Reporting<br>11 Inspections<br>13 Affirmative Marketing Plan<br>22 VHDA Foreclosure | 12 Transfer<br>14 Non-Discrimination<br>15 Default; Enforcement<br>16 Waiver; Forbearance<br>17 Amendment<br>18 Governing Law<br>19 Severability<br>20 Survival<br>21 Covenants Run with the Land<br>22 VHDA Foreclosure |
| **County ROFR Agreement** | | (entire document) |
| **Subordination Agreement** | | (entire document) |

# Exhibit 5: Sample County Closing Checklist

**Arlington County**

**[PROJECT NAME] Closing Checklist – Items Needed for County Review and/or Execution Prior to Closing** **Date Updated:**

| | | County to Provide | Borrower to Provide | Complete | Notes |
|---|---|---|---|---|---|
| 1 | **County Loan Documents** ***[to be adapted for the transaction]*** | | | | |
| a | Loan Agreement | √ | √ | | |
| b | Promissory Note | √ | √ | | |
| c | Deed of Trust | √ | √ | | |
| d | Deed of Declaration of Restrictive Covenants | √ | √ | | |
| e | ROFR Agreement | √ | √ | | |
| f | Subordination/Intercreditor Agreement | √ | √ | | |
| 2 | **County Loan Agreement Exhibits** | | | | |
| a | Property Legal Description | | √ | | |
| b | Development Budget | | √ | | |
| c | Utility Allowance | √ | | | |
| d | Income Certification for Income Restricted Units | √ | | | |
| e | Annual Rental Occupancy Affidavit | √ | | | |
| f | Income-Restricted Occupancy Report | √ | | | |
| g | Affirmative Marketing Plan | √ | | | |
| 3 | **TAF Agreement** ***[if applicable]*** | | | | |
| a | TAF Agreement | √ | √ | | |
| 4 | **Senior Loan Documents** | | | | |
| a | Senior Loan Documents | | √ | | |
| 5 | **Subordinate Loan Documents** | | | | |
| a | Subordinate Loan Documents | | √ | | |
| 6 | **Additional Pre-Disbursement Documentation per AHIF Loan Document Article II Section 206 - Disbursement Funding Conditions** ***[to be adapted for the transaction]*** | | | | |
| a | ALTA Policy of Lender's Title Insurance | | √ | | |
| b | LPA or Amended and Restated LPA | | √ | | |
| c | Appraisal | | √ | | |
| d | Purchase & Sale Agreement | | √ | | |
| e | Condominium Documents | | √ | | |
| f | Construction Contract | | √ | | |
| g | Development Fee Agreement | | √ | | |
| h | Asset Management Fee Agreement | | √ | | |
| i | Resident Services Agreement | | √ | | |
| j | ROFR Agreement | | √ | | |
| k | Property Management Agreement | | √ | | |
| l | Environmental Report | | √ | | |
| m | Legal Opinion | | √ | | |
| n | Incumbency & Secretary's Certificate | | √ | | |
| o | Evidence of Insurance Coverage | | √ | | |
| 7 | **Closing** | | | | |
| a | Wiring Instructions | | √ | | |
| b | Fully Executed Settlement Statement | | √ | | |
| c | Escrow Instructions | √ | | | |
| d | UCC Financing Statement | √ | | | |
| e | Invoices & Documentation for Closing Draw Package | | √ | | |

# Exhibit 6:
# Sample County Closing Instruction Letter

DEPARTMENT OF COMMUNITY PLANNING, HOUSING AND DEVELOPMENT
Housing Division

ARLINGTON
VIRGINIA

2100 Clarendon Boulevard, Suite 314, Arlington, VA 22201
TEL 703-228-3760 FAX 703-228-3834 *www.arlingtonva.us*

**[DATE]**

**BY EMAIL AND COURIER**

**[CONTACT NAME, ORGANIZATION AND ADDRESS]**

RE: Arlington County Affordable Housing Investment Fund (AHIF) Loan for **[PROJECT]**

Dear **[CONTACT NAME]**,

In connection with the ***[this section to be tweaked per the specifics of the deal]*** (a) acquisition of **[PROPERTY ADDRESS**] in Arlington County ("**Property**") by **[BORROWER],** a Virginia limited partnership ("**Borrower**"); (b) the closing on financing with **[SENIOR LENDER]** ("**[SENIOR LENDER]**"); (c) the closing on Low Income Housing Tax Credit Equity with **[INVESTOR]** ("**[INVESTOR]**"); (d) and the loan of certain Arlington County Affordable Housing Investment Fund funds ("**AHIF Loan**") to Borrower, this letter will serve as escrow instructions for the County Board of Arlington County, Virginia ("**Lender"**). In addition to the documents below related to the AHIF Loan, there have been or will be delivered to **[CONTACT ORGANIZATION]** (**"[CONTACT ORGANIZATION]"**) documents related to the loans provided by **[SENIOR LENDER]**.

**A. <u>Escrow</u>**. There have been or will be delivered to you in escrow the following related to the AHIF and Loan:

1. Arlington County AHIF Loan funds in the amount of **[AMOUNT OF COUNTY FUNDS BEING WIRED]** (**"County Funds**");
2. A fully executed Deed of Trust, Assignment of Rents and Leases and Security Agreement, dated **[CLOSING DATE]**, from **[BORROWER]**, a Virginia Limited Partnership, as grantor, to Julie Massie and Susan Stout, as trustees, for the benefit of The County Board of Arlington County, Virginia, securing an original principal indebtedness of **[COUNTY LOAN AMOUNT]** ("**County Deed of Trust**");
3. A fully executed Deed of Declaration of Restrictive Covenants, dated **[CLOSING DATE]**, from **[BORROWER]**, as declarant, for the benefit of The County Board of Arlington County,

Virginia, containing certain covenants, conditions and restrictions regarding the ownership, operation, use, rent and occupancy of the Property ("**County Covenants**");

4. A fully executed Right of First Refusal, dated **[CLOSING DATE]**, by and between The County Board of Arlington County, Virginia and **[BORROWER]** ("**County ROFR**");

5. A fully executed Subordination Agreement, dated **[CLOSING DATE]**, by and among The County Board of Arlington County, Virginia, **[BORROWER]**, and **[SENIOR LENDER]** ("**Subordination Agreement**"); and

6. UCC-1 Financing Statements in favor of the County (for recordation in Arlington County's Land Records and filing with the Virginia State Corporation Commission) for the AHIF Loan ("**County UCC-1 Financing Statements**").

For purposes of these escrow instructions, the documents listed in **Attachment 1** are referred to as "**Recording Documents,**" which shall be recorded in the manner and exact order set forth in Attachment 1 and in accordance with **[INVESTOR]** and **[SENIOR LENDER]** respective escrow instructions to you. You have the authority to enter the recording dated and Instrument Numbers in the applicable blanks in the legal description exhibits attached to the Recording Documents prepared by the County, if necessary:

**B. <u>Conditions to Closing</u>**. On or after **[CLOSING DATE]**, you are authorized and instructed to: (1) disburse the County Funds to the Borrower in accordance with the wiring instructions previously delivered to you by the Borrower, (2) record the Recording Documents listed in **Attachment 1** in the manner and exact order indicated in the attachment, (3) file the County UCC-1 Financing Statement with the Virginia State Corporation Commission, and (4) close the escrow; <u>only when</u> the following conditions are satisfied:

1. You have confirmed receipt of the County Funds, Tax Credit Equity, and the Recording Documents referred to in Paragraph A above, duly executed by all signatories, initialed and notarized where indicated;

2. You have confirmed that the undersigned, or designee, and Arlington County Attorney's Office (collectively, "**County**") have received all required legal opinions and organizational or other documents;

3. You have confirmed that the County has received fully executed copies of all documents related to the loan provided by **[SENIOR LENDER]**;

4. You have provided, via e-mail, to the County the fully executed settlement statement signed by the Borrower and certified by you as escrow agent;

5. You are ready to deliver to the County one (1) original and two (2) duplicate originals of the ALTA 2006 Title Insurance Loan Policy issued **[TITLE COMPANY]** in the full amount of the County Deed of Trust, naming the County as the insured, together with required endorsements and effective as of the date of disbursement of the County Funds (**"Lender's Title Policy**");

6. You are irrevocably committed to comply with any written instructions you may have received from, or on behalf of, the Borrower;

7. You are irrevocably committed to comply with any written instructions you may have received from, or on behalf of, **[SENIOR LENDER]** as the senior lender;

8. You have countersigned this letter and circulated a fully executed copy of this letter to the undersigned;

9. You are irrevocably prepared and committed to disburse the County Funds as contemplated by the final settlement statements and these instructions;

10. You have confirmed the recordation of all documents listed in Attachment 1; and
11. We have instructed you in writing, via email, to disburse the County Funds.

**C. <u>Wire Payment to County</u>**. Upon closing, you will wire **[AMOUNT OF OUTSIDE COUNSEL CHARGES]** per the **"Wiring Instructions"** attached as **Attachment 2** to the County to reimburse the County Attorney's Office for outside counsel fees.

**D. <u>Delivery of Documents and Title Policy</u>**. No later than five (5) business days following closing, or as soon as the recorded Recording Documents are available, please deliver the original and duplicates of the Lender's Title Policy to **[PROJECT LEAD]** and copies of the Recording Documents to **[PROJECT LEAD]** and Robert Dawson as set forth below:

**[PROJECT LEAD]**
Arlington County
Department of Community Planning, Housing & Development
Housing Division
2100 Clarendon Boulevard, Suite 700
Arlington, VA 22201

Robert Dawson
Arlington County
Office of the County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, VA 22201

**E. <u>Expenses</u>**. The Borrower shall pay all costs and expenses in connection with the transaction described herein, including, without limitation, costs incurred for the Lender's Title Policy, escrow fees, photocopying, recording and filing fees, mortgage taxes, title company services, and all other such fees, charges, and taxes. The County shall have no responsibility or liability for any costs or expenses that may be incurred in connection with closing the transaction described herein.

**F. <u>Other</u>**. If, for any reason, the Recording Documents are not, in fact, delivered for recording within two (2) business days of closing, or if the conditions to disbursement of the County Funds are not satisfied within two (2) business days of the date hereof, you will immediately advise the County. Unless otherwise instructed by the parties in writing, all monies and documents delivered to you with this letter or otherwise should be immediately returned to the party or parties that originally delivered such monies and/or documents. By signing below, you expressly agree to insure any “gap” period that would ensue.

*          *          *          *

If, for any reason, you are unable to comply with the instructions above to initiate the wire of the Funds before or by 3:00 p.m. (Eastern) on **[CLOSING DATE]**, you are instructed to immediately contact David Cristeal, Housing Division Chief, at 703-228-0761, for further instructions. Please acknowledge your acceptance of these instructions by executing and returning the enclosed copy of this letter to the undersigned representative of Arlington County. Please note that this letter of instructions will be signed in multiple counterparts, each of which shall constitute but one original.

Very truly yours,

David Cristeal

Housing Division Director

Enclosures

cc: Yoomie Ahn (w/o enclosures)

Robert Dawson (w/o enclosures)

**[PROJECT LEAD]** (w/o enclosures)

**[SIGNATURE PAGE FOLLOWS]**

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF **[CONTACT ORGANIZATION]**, HEREBY ACCEPTS THESE INSTRUCTIONS AND AGREES TO THE TERMS HEREOF AS OF THIS ____ DAY OF **[MONTH]**, **[YEAR]**.

**[CONTACT ORGANIZATION]**

By:____________________________________

Name:__________________________________

Title:________________________________

**ATTACHMENT 1: [PROJECT]  Recording Order List**

**[ADD APPROVED RECORDING ORDER]**

**ATTACHMENT 2: Wiring Instructions**

**[ADD COUNTY WIRING INSTRUCTIONS]**