

## Promissory Note

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$27,500,000]

July \_\_, 2024

FOR VALUE RECEIVED, Gulfway Housing Partners, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “*Issuer*”) the principal sum of [Twenty Seven Million and Five Hundred Thousand] Dollars, together with interest on the unpaid principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds. All such payments of principal and interest shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office (initially, in St. Paul, Minnesota) of U.S. Bank Trust Company, National Association, a national banking association, or its successor (the “*Trustee*”) as trustee under the Indenture (as hereinafter defined).

The principal and interest shall be payable on the dates that principal and interest on the Bonds are payable, as provided in the Indenture and the Agreement.

This promissory note is the “*Note*” referred to in the Loan Agreement, dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Agreement*”), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Trust Indenture dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

As long as HUD is the insurer or holder of the Lender Borrower Note on FHA Project No. [115-36038], the following provisions (“HUD Provisions”) shall be in full force and effect (capitalized terms used in the following paragraphs (1)-(7), but not defined herein, shall have the meanings given to them in that certain Subordination Agreement dated as of July 1, 2024, among the Issuer, the Borrower and Merchants Capital Corp., as senior lender):

(1) any payments due under this Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than one percent (1%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Borrower cumulatively exceed one percent (1%) of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note;

(2) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources;

(3) after the endorsement to the trustee for the Bonds and pledge of this Note under the Bond Indenture, this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except (1) with the prior written approval of HUD, or (2) if transferred to another state agency or wholly-owned corporation of a state entity pursuant to state legislative or executive action;

(4) *Intentionally omitted;*

(5) Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;

(6) the terms and provisions of this Note are enforceable by HUD against Borrower and Lender and their successors and assigns, to the extent allowed by law. This Note may not be modified or amended without the written consent of HUD, except for modifications or amendments caused by changes in state or federal law which become automatically effective without the consent of the parties to this Note; and provided that any modification or amendment made without HUD’s written consent may cause the Bond Mortgage to be an unpermitted encumbrance; and

(7) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.

*[Signatures continue next page.]*

BORROWER:

**GULFWAY HOUSING PARTNERS, LP**  
a Texas limited partnership

By: Gulfway Housing Management, LLC  
a Texas limited liability company,  
Its: General Partner

By: Vitus Development III, LLC  
a Delaware limited liability company,  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Stephen R. Whyte, President

ENDORSEMENT

Pay to the order of U.S. Bank Trust Company, National Association, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS

By: \_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to Board

Dated: \_\_\_\_\_, 2024