

January 30, 2018

U.S. Department of Housing & Urban Development
Attn: Richard M. Thomason
One N. Central Avenue, Suite 600
Phoenix, Arizona 85004

Re: HUD Waiver Request to 24 CFR 570.505 Requirements

Dear Mr. Thomason,

Background

The purpose of this letter is to request a waiver of 24 CFR 570.505 (Use of Real Property) which would grant the City permission to transfer the real property to a non-profit utilizing the requirements of 24 CFR 570.503(b)(7) (Reversion of Assets).

The City of Mesa ("City") has been a recipient of Community Development Block Grant funding ("CDBG") from the U.S. Department of Housing & Urban Development ("HUD") since 1975. With these CDBG funds, the City acquired or improved numerous properties over the years, many of which are leased to non-profit agencies for the administration of programs that are CDBG eligible activities; specifically, the agencies serve low and moderate-income households and individuals experiencing homelessness or domestic violence. Our lease agreements outline the programs and activities that the non-profit leases are permitted to do during the term of the lease. These leases are for a nominal fee based on the benefit to the community provided by the non-profits and the fact that, in most instances, the non-profit agency is fully responsible for ensuring the building is properly maintained and must make all repairs during its lease term. These requirements are outlined in our lease agreements and monitoring of these facilities is conducted by the City to ensure compliance.

One of those non-profit agencies, A New Leaf, Inc. ("New Leaf") has served the community of Mesa for over 45 years. New Leaf started out as PreHab of Arizona, but have since changed their name and expanded their programs and services. Since 1976, New Leaf has leased property from the City that was acquired using CDBG funding and has demonstrated themselves to be excellent tenants. They

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have complied with the terms of their lease agreements while servicing the community needs of low-income residents of Mesa. They have maintained the properties in excellent condition to ensure the safety of the occupants as well as maintaining the character and enhancement of the neighborhood.

Recently, New Leaf, requested to have the ownership of three (3) of these leased CDBG properties transferred to it. The properties requested are: (1) [REDACTED] Mesa, AZ 85203; (2) [REDACTED] Mesa, AZ 85201; and (3) 217 W. University Drive, Mesa, AZ 85201 (collectively the "Properties" or individually a "Property"). The City would like to grant New Leaf it's request, however, to minimize the financial impact upon New Leaf, a waiver is needed. This waiver would allow the City to dispose of the Properties using 24 CFR 570.503 (Reversion of Assets) instead of 24 CFR 570.505 (Disposition of Property). The City views this action as appropriate since the City itself does not utilize the buildings for programs operated by the City, but leases these buildings to New Leaf for the purposes of providing services to the low-income residents of Mesa. New Leaf has maintained and utilized the properties to serve the low-income residents over many years, above and beyond the continued use period (minimum of five years after termination of contract) that would be required if New Leaf itself was awarded CDBG funds to purchase similar properties for an eligible CDBG use. Therefore, as set forth more fully below, the City believes a transfer is appropriate and to facilitate the transfer of the Properties to New Leaf, the City is requesting a waiver from the requirements of 24 CFR 570.505 for the Properties.

The following paragraphs will detail the history of each Property, will show the amount and sources of funds invested in the Properties, the current value of each Property, the date each Property was acquired and leased, and their uses over the years. The goal is to provide HUD with the information necessary for the evaluation of the City's waiver request; if any additional information is required, the City is happy to provide it.

Properties

1. **Hobson Property** The City purchased this residential property in 1992 using CDBG funds in the amount of \$41,500 for the expansion of domestic violence shelter services in Mesa. The Property consisted of 797 square feet, two-bedroom, one-bath house. The Property was adjacent to an [REDACTED]

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New Leaf entered into a lease agreement with the City the same year the Property was acquired and has utilized that Property since that time. New Leaf has made improvements to the Property including a 1,400 square foot storage facility to the existing Property. The use of the Property has remained the same throughout the term of the lease, a domestic violence shelter. The shelter is important to the City as it is the only domestic violence shelter of its kind available in Mesa. The City provides CDBG, ESG, and/or City general funds to ensure the operation of this shelter on an annual basis. This facility provides a critical service to Mesa as it is the only domestic service of its kind in Mesa. The Property was recently appraised in September 2017 and was valued at \$121,000.

2. **Main Property**. The City acquired and rehabilitated this residential property in 1996 using CDBG funds. This Property consisted of 1,983 square feet, four-bedroom, one-bath house. The cost of the acquisition and rehabilitation was \$152,300. New Leaf entered into a lease agreement with the City in October 1996 to use the Property as a youth shelter. It was operated as a temporary youth shelter for 19 years, but transitioned to a homeless shelter for women in August 2013 and continues to be operated as such. The City provides CDBG, ESG, and/or City general funds to ensure the operation of this shelter on an annual basis. This facility provides a critical service to Mesa since it is the only women's shelter in Mesa. The property was appraised in September 2017 and was valued at \$166,000.
3. **217 W. University Drive** – The City acquired the commercial property in March 2007 using CDBG funds in the amount of \$388,321.58. The Property is zoned General Commercial and includes a 3,694 square foot office building. New Leaf entered into a lease agreement in April 2008 with the City to operate an alternative youth center providing counseling, education, administration and related services to juveniles (ages 8 to 17) and their families. In 2014, the funding for this program was cancelled by the courts and the Property was converted to office space for New Leaf's Information Technologies department which provides support to the multiple service programs they operate. The Property was appraised in September 2017 and was valued at \$350,000.

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Regulation: 24 CFR 570.505 (Use of Real Property)

The waiver is being requested based on the following requirements of 24 CFR 570.505, which states:

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting one of the national objectives in § 570.208 (formerly § 570.901) and is not a building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in § 570.504(b)(4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

Waiver Request

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Based on the language in the regulation, so long as the City remains an entitlement jurisdiction, participating in and receiving funds from the CDBG program, the Properties remain subject to the CDBG requirements unless the CDBG program is reimbursed the CDBG funding attributable to the Properties. For practical purposes, the City intends to continue to participate in the CDBG program for the foreseeable future, thus these requirements could potentially continue with the Properties in perpetuity.

Any change of use of the Properties would require the public an opportunity to comment on the change of use, particularly from affected citizens. The new use must also need to meet a national objective. Failure to do so would require reimbursement to the CDBG program in the amount equal to the current fair market value of the properties which equates to \$637,000. The City desires to transfer the Properties to New Leaf for a nominal fee, rather than sell the Properties for fair market value for the following reasons: (1) New Leaf has proven to be good tenants that provide a service to the community that benefits Mesa citizens; and (2) the City does not want to burden New Leaf with additional debt and would rather they use their funds to improve the Properties or increase the amount of services they provide. To achieve these goals without a waiver from HUD would require the City to reimburse the CDBG program for the current fair market value of the Properties, thus creating a financial burden on the City.

For the above reasons, the City is requesting HUD consider allowing the transfer of each Property to New Leaf under subrecipient agreements per CDBG regulation **24 CFR 570.503(b)(7) Reversion of Assets** which states:

“The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:

- (i) Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- (ii) Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is

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required after the period of time specified in paragraph (b)(7)(i) of this section.)”

The benefit of the transfer is it will strengthen New Leaf’s property portfolio, which increases their ability to access funds for future development projects. New Leaf has no plans to change the current use of the buildings and understands the obligation to maintain that use during the five-year continued use period or longer as determined by HUD. The transfer of the Properties would be similar to a subrecipient grant award to New Leaf for the acquisition and improvement of the Properties even though no CDBG funds would be awarded. The City proposes that the subrecipient grant agreements require the use of the Properties remain the same and subject to CDBG requirements for at least five (5) years. The transfer would be supported with a separate forgivable promissory note (forgivable after six years) for the value of each Property and would be secured with a separate deed of trust for each Property. To ensure the continued use of the properties, the City would place restrictive covenants on each Property describing the required use of the Property for the five (5) year period. In granting a waiver, the above is the City proposed solution; however, the City is open to any additional stipulations that HUD may want to include in the subrecipient agreement or other transfer documents.

Please contact Ray Thimesch at 480-644-4521 or ray.thimesch@mesaaz.gov for additional information or questions regarding the City’s request.

Thank you,



Liz Morales
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