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**TULSA DEVELOPMENT AUTHORITY BOARD MEETING  
STAFF REPORT**

**MEETING DATE:** March 7, 2019  
**TO:** Chairman and Board Members  
**FROM:** Office of Tulsa Development Authority  
**SUBJECT:** Transfer of Irrevocable Letter of Credit from F&M Bank International to MapleMark Bank for American Residential Group (Metro on Brady Project) located at 10 East Archer Street, Tulsa, Oklahoma.

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**Background:**

<b>Owner</b>	<b>American Residential Group</b>
<b>Developer:</b>	<b>Metro at Brady</b>
<b>Engineer:</b>	<b>N/A</b>
<b>Location:</b>	<b>10 East Archer Street</b>
<b>Size of Tract:</b>	<b>N/A acres</b>
<b>Number of Lots:</b>	<b>N/A</b>
<b>Development Area:</b>	<b>The Art's District</b>
<b>Fair Market Value:</b>	<b>\$3,000,000.00</b>
<b>Executive Director:</b>	<b>O.C. Walker</b>

**Relevant Info:** On February 23, 2009, the TDA Board of Commissioner's approved Resolution No. 5474, approving an application from American Residential Group, Ltd. for a second mortgage loan in the principal sum of \$4 million dollars. The funds are associated with Vision 2025 Sales Tax Programs. American Residential Group repaid TDA \$1 Million on October 15, 2014 from Tulsa Uptown Redevelopment Corporation and Tribune Building Redevelopment Corporation. Repayment of the funds were deposited into Fund No. 6965/715 TDA – Sales Tax Projects. The funds are eligible to be recycled for Downtown Housing Funds in Tulsa, Oklahoma.

This is a request from American Residential Group to the TDA Board of Commissioner's to transfer an Irrevocable Letter of Credit from F&M Bank International to MapleMark Bank. The Letter of Credit shall expire upon the close of business on March 1, 2022. The rational for transferring from F&M Bank to Maple Mark Bank is because the Redeveloper received better amenities as a result.

**Attachments:** Irrevocable Letter of Credit from F&M Bank International dated April 11,

2013

Irrevocable Letter of Credit from Maple Mark Bank dated February 27, 2019

**Recommendations:** Staff recommends this item be approved as presented

**Reviewed By:** O.C. Walker

# IRREVOCABLE LETTER OF CREDIT

**Borrower:** Loft Partners LLC  
2624 E. 21st Street  
Tulsa, OK 74114

**Lender:** MapleMark Bank  
Tulsa Branch  
Southern Hills Tower  
2431 East 61st Street, Suite 150  
Tulsa, OK 74136

**Beneficiary:** Tulsa Development Authority  
City Hall, 175 East Second Street  
Tulsa, OK 74103

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**NO.: 5002**

**EXPIRATION DATE.** This letter of credit shall expire upon the close of business on 03-01-2022 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

**AMOUNT OF CREDIT.** Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Three Million & 00/100 Dollars (\$3,000,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

**WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.**

**DRAFT TERMS AND CONDITIONS.** Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

The original letter of credit and all amendments must accompany any documents presented under this letter of credit and a sight draft bearing the clause "Drawn under MapleMark Bank Letter of Credit No. 5002 dated February 27, 2019".

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

**USE RESTRICTIONS.** All drafts must be marked "DRAWN UNDER MapleMark Bank IRREVOCABLE LETTER OF CREDIT NO. 5002 DATED 02-27-2019," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are not permitted under this Letter of Credit.

**PERMITTED TRANSFEREES.** The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

**TRANSFEREES REQUIRED DOCUMENTS.** When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

**COMPLIANCE BURDEN.** Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

**NON-SEVERABILITY.** If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

**GOVERNING LAW.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oklahoma without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Oklahoma.

**EXPIRATION.** Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

IRREVOCABLE LETTER OF CREDIT  
(Continued)

Loan No: 5379205


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Dated: February 27, 2019

LENDER:

MAPLEMARK BANK

By:   
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Will Richardson, Tulsa President



**IRREVOCABLE STANDBY LETTER OF CREDIT**

**LETTER OF CREDIT NUMBER:** 4796

**ISSUE DATE:** APRIL 11, 2013

**BENEFICIARY:**

TULSA DEVELOPMENT AUTHORITY  
CITY HALL, 175 EAST SECOND STREET  
TULSA, OK 74103

**APPLICANT:**

LOFT PARTNERS LLC  
2624 E. 21<sup>ST</sup> STREET  
TULSA, OK 74114

**AMOUNT:** USD4,000,000.00

**EXPIRATION:** MARCH 1, 2015  
(SUBJECT TO RENEWAL AS PROVIDED  
HEREIN)

GENTLEMEN:

THE F&M BANK & TRUST COMPANY ON BEHALF OF LOFT PARTNERS LLC, HEREBY ISSUES IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT FOR THE AMOUNT OF FOUR MILLION AND NO/100 U.S. DOLLARS (USD4,000,000.00) WHICH IS AVAILABLE AGAINST PRESENTATION OF YOUR DRAFT(S) AT SIGHT DRAWN ON US AND ACCOMPANIED BY THE FOLLOWING DOCUMENT(S):

AN ORIGINAL DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF TULSA DEVELOPMENT AUTHORITY STATING THAT "TULSA DEVELOPMENT AUTHORITY IS DRAWING UPON THIS LETTER OF CREDIT AS A RESULT OF A DEFAULT BY LOFT PARTNERS LLC IN CONNECTION WITH THE TERMS OF THAT CERTAIN AMENDED AND RESTATED PROMISSORY NOTE IN THE STATED PRINCIPAL SUM OF FOUR MILLION AND NO/100 U.S. DOLLARS (USD4,000,000.00) ENTERED INTO AS OF APRIL 11, 2013, BETWEEN TULSA DEVELOPMENT AUTHORITY ("PAYEE AGENT"), AND LOFT PARTNERS LLC ("MAKER"), AN OKLAHOMA LIMITED LIABILITY COMPANY."

**ADDITIONAL CONDITIONS:**

THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS MUST ACCOMPANY ANY DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT. THE F&M BANK & TRUST COMPANY WILL ENDORSE THE REVERSE OF THE ORIGINAL LETTER OF CREDIT FOR THE AMOUNT OF THE DRAWING HONORED BY US AND RETURN SAME TO YOU.

DRAWINGS UNDER THIS LETTER OF CREDIT ARE AVAILABLE AS FOLLOWS:

DRAWING AMOUNT OF USD1,000,000.00 IS AVAILABLE UP TO NOVEMBER 1, 2014 AT WHICH TIME THIS LETTER OF CREDIT WILL AUTOMATICALLY DECREASE TO AN AGGREGATE AMOUNT OF USD3,000,000.00

DRAWING AMOUNT OF USD3,000,000.00 IS AVAILABLE FROM NOVEMBER 2, 2014 UP TO THE EXPIRATION DATE OF THIS LETTER OF CREDIT.

THE F&M BANK & TRUST COMPANY - INTERNATIONAL DEPARTMENT 1330 South Harvard Tulsa, Oklahoma 74112, USA

PHONE 918.748.4147 FAX 918.743.6196 EMAIL [international@fmbanktulsa.com](mailto:international@fmbanktulsa.com)

ABA No. 103912668 SWIFT: BKTTUS44

THIS LETTER OF CREDIT EXPIRES ON MARCH 1, 2015 OR ANY EXTENDED EXPIRATION DATE, AT THE OFFICE OF THE F&M BANK & TRUST COMPANY, ATTN: INTERNATIONAL DEPARTMENT, 1330 S. HARVARD, TULSA, OKLAHOMA, 74112.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRY DATE, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO SUCH EXPIRY DATE THE F&M BANK & TRUST COMPANY SENDS TO YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD.

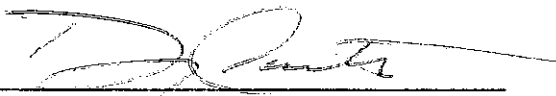
UPON RECEIPT BY YOU OF SUCH NOTICE, YOU MAY DRAW HEREUNDER BY MEANS OF YOUR DRAFTS ON US AT SIGHT ACCOMPANIED BY YOUR LETTER STATING THAT YOU HAVE RECEIVED NOTICE THAT LETTER OF CREDIT NO. 4796 WILL NOT BE RENEWED AND THAT OBLIGATIONS BETWEEN TULSA DEVELOPMENT AUTHORITY AND LOFT PARTNERS LLC REMAIN OUTSTANDING.

DRAFT(S) UNDER THIS LETTER OF CREDIT MUST BEAR THE CLAUSE "DRAWN UNDER THE F&M BANK & TRUST COMPANY LETTER OF CREDIT NO. 4796 DATED APRIL 11, 2013."

THIS IRREVOCABLE LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600.

THE F&M BANK & TRUST COMPANY HEREBY ENGAGES WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED AT OUR OFFICE ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT.

SHOULD YOU HAVE OCCASION TO COMMUNICATE WITH US REGARDING THIS LETTER OF CREDIT, KINDLY DIRECT YOUR COMMUNICATION TO THE ATTENTION OF OUR LETTER OF CREDIT DEPARTMENT, MAKING SPECIFIC REFERENCE TO OUR LETTER OF CREDIT NO. 4796 (TELE: 918-748-4147, FAX: 918-743-6196, [INTERNATIONAL@FMBANKUSA.COM](mailto:INTERNATIONAL@FMBANKUSA.COM)).

  
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DOUG CARTER  
SENIOR VICE PRESIDENT

  
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KENT R. PATTERSON  
ASSISTANT VICE PRESIDENT