

## **Exhibit 1**

### **Funding and Construction Agreement**

AGREEMENT

BETWEEN

CRYSTAL LAKES REDEVELOPMENT, LTD.

and

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

concerning

COST SHARING FOR UTILITY INFRASTRUCTURE IMPROVEMENTS ALONG NORTH  
24<sup>th</sup> AVENUE BETWEEN FARRAGUT STREET AND GREEN STREET  
(collectively the "Agreement")

This Agreement is made by and between CRYSTAL LAKES REDEVELOPMENT, LTD. a State of Florida limited partnership (hereinafter referred to as "CRYSTAL LAKES") and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA a corporate body and a political subdivision of the State of Florida (hereinafter referred to as "SBBC") CRYSTAL LAKES and SBBC shall hereinafter collectively be referred to as the "parties" unless otherwise referenced herein.

WHEREAS, on June 19, 2003 the Broward County Housing Authority issued a request for proposals ("RFP") seeking qualified vendors to enter into a partnership to redevelop an obsolete affordable housing project known as the Crystal Lakes Apartments; and

WHEREAS, on September 19, 2003 the Broward County Housing Authority, through an affiliate, Building Better Communities, Inc., awarded the RFP to PHG-Crystal, LLC, an affiliate of Pinnacle Housing Group; and

WHEREAS, CRYSTAL LAKES, a joint venture controlled by BBC Homes, Inc., a wholly-owned for-profit subsidiary of Building Better Communities, Inc. (a 501(c)(3) non-profit affiliate of Broward County Housing Authority) and PHG-Crystal, LLC, has been created for the sole purpose of redeveloping 190 workforce rental housing units on the site; and

WHEREAS, although the current site utilities adequately service the property, CRYSTAL LAKES is interested in partnering with the SBBC to install a larger eight inch (8") water main line on North 24<sup>th</sup> Avenue from Farragut Street, the southernmost point of the redevelopment, to the northernmost point of the redevelopment, which is approximately Green Street; and

WHEREAS, the SBBC has already committed to constructing an eight inch (8") water main line at this location as part of the funded improvements relating to the Mary M. Bethune Elementary School and Attucks Middle School; and

WHEREAS, the City of Hollywood, Florida (the "City") has deemed that the construction of the water main is necessary to support the development activities contemplated by the SBBC and that post construction the water main will be owned and operated by the City; and

WHEREAS, the SBBC is desirous of partnering with CRYSTAL LAKES to reduce its costs associated with the water main line at this location; and

WHEREAS, CRYSTAL LAKES is desirous of partnering with the SBBC to improve the water main servicing its property; and

WHEREAS, under the terms of this Agreement, CRYSTAL LAKES shall construct its portion of the water main improvement and the SBBC shall reimburse CRYSTAL LAKES fifty percent (50%) of the construction costs, as further delineated herein;

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, the SBBC and CRYSTAL LAKES do hereby agree as follows:

#### ARTICLE I BACKGROUND, PURPOSE AND INTENT

- 1.1 The above recitals are true and correct and incorporated herein as if set forth in full hereunder.
- 1.2 It is the purpose and intent of this Agreement to equally share the costs associated with the construction of an eight inch (8") water main line on North 24<sup>th</sup> Avenue from Farragut Street, the southernmost point of the Crystal Lakes redevelopment, to the northernmost point of the Crystal Lakes redevelopment, which is approximately Green Street, as more particularly described in Composite Exhibit "A" (hereinafter Composite Exhibit "A" shall be referred to as the "Project").

#### ARTICLE 2 TERMS

- 2.1 CRYSTAL LAKES shall agree to the following:
  - a. CRYSTAL LAKES shall perform all of the work identified in this Agreement and as particularly delineated in Composite Exhibit "A" (also known hereinafter as the "Scope of Work"), which shall include complete construction and design of the Project.

b. The Project shall be completed within twelve (12) months from the date of this Agreement.

c. CRYSTAL LAKES shall provide monthly progress reports to the SBBC.

d. Upon completion of the Project, CRYSTAL LAKES shall furnish to the SBBC documentation include the following:

1. A copy of the final inspection from the City of Hollywood relating to the Project.

2. A copy of all plans utilized for the construction of the Project.

e. CRYSTAL LAKES shall be responsible for the quality and timely completion of the Project. CRYSTAL LAKES shall be responsible for the design and construction of the Project. CRYSTAL LAKES, shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Project, until the Project receives final approval from the City of Hollywood.

f. CRYSTAL LAKES agrees that all work performed under this Agreement shall comply with all applicable laws, ordinances, codes and regulations. CRYSTAL LAKES shall acquire any approvals and permits required by state and local law for the Project.

g. All risk of destruction, or damage to the Project or any part thereof from any cause whatsoever shall be borne by CRYSTAL LAKES until CRYSTAL LAKES receives final written approval of the Project by the City of Hollywood.

SBBC shall agree to the following:

a. The SBBC shall reimburse CRYSTAL LAKES an amount not to exceed One Hundred Eight Thousand Three Hundred Fifty Five Dollars and Zero Cents (\$108,355.00), which equals fifty percent (50%) of the Two Hundred Sixteen Thousand Seven Hundred and Ten Dollars (\$216,710.00) estimated Project contract price, as delineated by the SBBC'S engineer, attached hereto as Exhibit "B" (hereinafter referred to as "Estimate"). Upon completion and final approval of the Project, CRYSTAL LAKES shall present a copy of its final invoice, which shall delineate all costs associated with the Project, and a copy of all of its releases to the SBBC. Within thirty (30) calendar days of the receipt of the submission, the SBBC shall process the invoice and shall remit to CRYSTAL LAKES an amount not to exceed One Hundred Eight Thousand Three Hundred Fifty Five Dollar and Zero Cents (\$108,355.00), which equals fifty percent (50%) of the Estimate.

Both parties shall agree to the following:

a. The scope of the Project is solely limited to the work delineated in Composite Exhibit "A", which has been approved by both parties.

- b. The SBBC has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Work to be provided under this Agreement.
- c. The City of Hollywood shall have the sole authority to inspect the work performed on the Project.
- d. The SBBC'S utilization of the Project shall be in its "AS IS" "WHERE IS" condition.
- e. Aside from timely constructing the Project in accordance with the plans and the requirements of the City of Hollywood, CRYSTAL LAKES has no additional responsibilities as it relates to this Agreement, except as specifically delineated herein.
- f. Aside from providing CRYSTAL LAKES with fifty percent (50%) reimbursement for the construction of the Project, the SBBC has no additional responsibilities as it relates to this Agreement, except as specifically delineated herein.
- g. The parties shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.

### ARTICLE 3 INDEMNIFICATION

- 3.1 CRYSTAL LAKES acknowledges and agrees that until the Project receives final approval from the City of Hollywood that any liability of the SBBC that is specifically connected with CRYSTAL LAKES' obligation to build the water main, as described herein, shall be borne solely by CRYSTAL LAKES, and CRYSTAL LAKES agrees to indemnify, defend, protect same and hold SBBC harmless from and against any and all costs, losses, liabilities and expenses arising in connection with any liability, claim, threatened claim, action, lawsuit, damages or any other matter which SBBC would be required to reply and/or to defend.

### ARTICLE 4 MISCELLANEOUS

- 4.1 Joint Preparation: The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The headings used in this Agreement are for convenience only and shall not be considered as part of this Agreement in any respect nor shall they in any way affect the substance of any provisions contained in this Agreement.
- 4.2 Merger: This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings

concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

- 4.3 Assignment: The respective obligations of the parties set forth herein shall not be assigned, in whole or in part, without the written consent of the other party.
- 4.4 Governing Law and Venue: This Agreement shall be governed, construed and controlled according to the laws of the State of Florida without regard to the conflict of laws provisions. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.
- 4.5 Breach: Each party hereto acknowledges and agrees that in the event that the other party breaches (such party, the "Breaching Party") any representation, warranty, term, condition or obligation to be kept and performed by such Breaching Party, that the non-breaching party shall suffer damages and that the non-breaching party shall have all rights available to the non-breaching party at Law or in Equity to enforce the non-breaching party's rights under this Agreement. In addition, the Breaching Party agrees that the non-breaching party shall be entitled to attorneys' fees and costs for enforcement of the terms and conditions of this Agreement at all tribunal levels.
- 4.6 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute the same Agreement.
- 4.7 Severability: In the event any word, phrase, clause, sentence or section of this Agreement is found by a court of competent jurisdiction to be invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Agreement.
- 4.8 Notices: Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt or by an overnight express delivery service addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery.

CRYSTAL LAKES:

David O. Deutch, Vice President  
PHG-Crystal, LLC  
9400 S. Dadeland Blvd., Suite 100  
Miami, Florida 33156



AND

Kevin Cregan, Executive Director  
Broward County Housing Authority  
4780 N. State Road 7  
Building E  
Lauderdale Lakes, Florida 33319

With a copy to:

Keith M. Poliakoff, Esquire  
3111 Stirling Road  
Ft. Lauderdale, FL 33312

SBBC:

Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, FL 33301



With a copy to:

Michael Garretson,  
Deputy Superintendent, Facilities & Construction Management  
The School Board of Broward County, Florida  
1700 SW 14<sup>th</sup> Court  
Fort Lauderdale, FL 33312

- 4.9 Third Party Beneficiaries: None of the parties hereto intend that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 4.10 Waiver: The failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

- 4.11 Compliance with Laws: The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.
- 4.12 Amendments: Except as expressly authorized in this Agreement, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 4.13 Binding Effect: This Agreement shall be binding upon and inure to the benefit of all of the parties and their successors and assigns.
- 4.14 Cooperation: The parties agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto. Accordingly, without, in any manner, limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: CRYSTAL LAKES through its Vice President duly authorized to execute same on this 27<sup>th</sup> day of April, 2006 and the SBBC through its Chair authorized by formal action on the 7 day of \_\_\_\_\_, 2006.

CRYSTAL LAKES REDEVELOPMENT, LTD

By: 

David O. Deutch, Vice President  
PHG-Crystal, LLC  
Managing General Partner



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

By \_\_\_\_\_  
Benjamin J. Williams, Chair

\_\_\_\_\_  
Witness as to all Signatories  
Print Name \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Franklin L. Till, Superintendent of  
Schools

\_\_\_\_\_  
Witness as to all Signatories  
Print Name \_\_\_\_\_

(CORPORATE SEAL)

State of Florida, Broward County

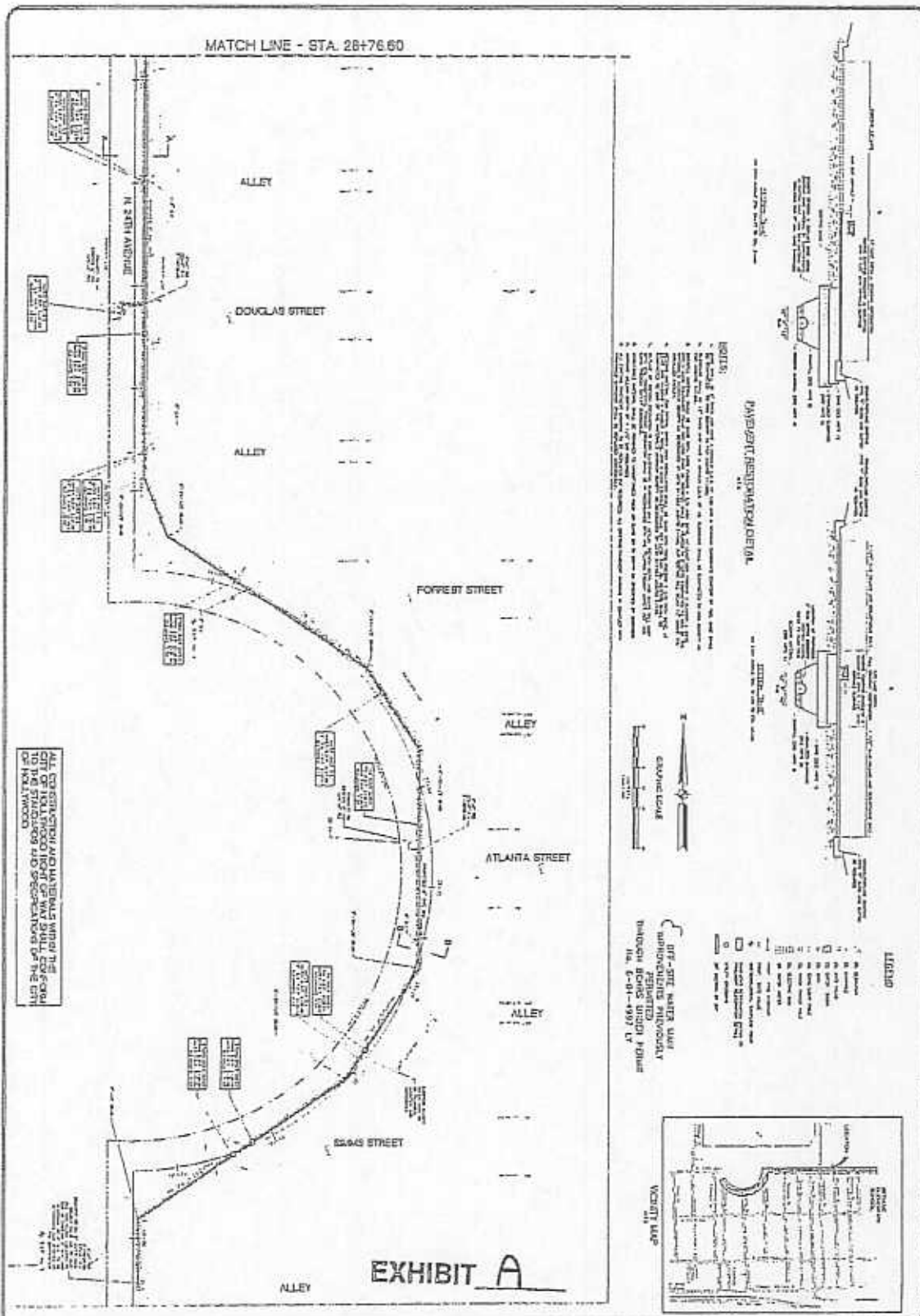
WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2006

Print Name \_\_\_\_\_ (AFFIX NOTARY SEAL)

My Commission Expires: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Edward J. Marko, School Board Attorney

FTL\_DB: P00698/088286:978178\_1\_KPOLIAKO



<b>CRYSTAL LAKES</b> OFF-SITE WATER MAIN PLAN		<b>REITH</b> ENGINEERS 111 EAST ATLANTIC AVENUE FORT LAUDERDALE, FLORIDA 33301 STATE OF FLORIDA LICENSE NO. 1416 EXPIRATION DATE 12/31/2000	CITY OF HOLLYWOOD BROWARD COUNTY, FLORIDA
DATE: 10/10/97 DRAWN BY: J. L. BROWN CHECKED BY: J. L. BROWN APPROVED BY: J. L. BROWN	DATE: 10/10/97 DRAWN BY: J. L. BROWN CHECKED BY: J. L. BROWN APPROVED BY: J. L. BROWN	DATE: 10/10/97 DRAWN BY: J. L. BROWN CHECKED BY: J. L. BROWN APPROVED BY: J. L. BROWN	DATE: 10/10/97 DRAWN BY: J. L. BROWN CHECKED BY: J. L. BROWN APPROVED BY: J. L. BROWN



ENGINEER'S OPINION OF PROBABLE COST

				DATE 03/21/06	
PROJECT TITLE HOLLYWOOD CRYSTAL LAKE			K & A PROJECT NO. 03040.00		
LOCATION City of Hollywood, Florida					
CITY OF HOLLYWOOD APPROVED MODEL 8-inch off-site water main improvements					
ESTIMATED BY SS		CHECKED BY MC		APPROVED BY WS	
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE MAT. & LAB	ESTIMATED AMOUNT
General					
1	Mobilization	1	LS	\$5,000.00	\$5,000.00
	Subtotal				\$5,000.00
Off-site Water Main Improvements from Farragut Street to Green Street					
1	8-inch PVC Water Main	1,659	LF	\$30.00	\$49,770.00
2	Connection to Existing Water Main	4	EA	\$4,000.00	\$16,000.00
3	Sample Point	3	EA	\$350.00	\$1,050.00
4	New Service Laterals (Single)	30	EA	\$450.00	\$13,500.00
5	Connection of new laterals to existing meters	30	EA	\$450.00	\$13,500.00
6	Abandon, Cap, Restrict and Grout Old 6-inch W. M.	1,659	LF	\$8.00	\$13,272.00
7	Disinfection of Water Main	1	LS	\$5,500.00	\$5,500.00
	Subtotal				\$112,592.00
Roadway Restoration					
1	Milling Existing asphalt pavement (1.5" avg. depth)	2,900	SY	\$2.00	\$5,800.00
2	Excavation	1,370	CY	\$1.50	\$2,055.00
3	Pavement Removal	1,500	SY	\$2.00	\$3,000.00
4	1.5" Asphalt, Type S-III	4,400	SY	\$6.50	\$28,600.00
5	12" Stabilized Subgrade	1,500	SY	\$2.50	\$3,750.00
6	8" Limerock Base	1,500	SY	\$5.00	\$7,500.00
7	Type "F" Curb and Gutter	2,700	LF	\$15.00	\$40,500.00
8	Backfill	400	CY	\$4.00	\$1,600.00
	Subtotal				\$92,805.00
				Subtotal =	\$210,397.00
				3% Maintenance of Traffic =	\$6,311.91
				TOTAL =	\$216,708.91

NOTES:

- 1 All quantities were calculated based on engineering plans
- 2 Proposed improvements based on utility as-builts provided by the City of Hollywood and the School Board of Broward County
- 3 The proposed water main was based on connection to an existing 8-inch water main at N 34th Avenue at Siggins Street
- 4 Unit prices shown on this estimate are based from various sources (Siltek Contractors, FDOT, BCED, etc.)
- 5 No utility coordination and/or relocation included in this estimate
- 6 No major clearing and grubbing/landscaping/irrigation are included in this estimate
- 7 Additional coordination required with the City of Hollywood Underground Utilities Department
- 8 Number of service laterals were estimated at approximately 1 per every 50 LF of water main. Exact number of service laterals unknown

EXHIBIT B

ENGINEER'S OPINION OF PROBABLE COST

				DATE 03/21/06	
PROJECT TITLE HOLLYWOOD CRYSTAL LAKE				K & A PROJECT NO. 03040.00	
LOCATION City of Hollywood, Florida					
CITY OF HOLLYWOOD APPROVED MODEL 8-inch off-site water main improvements					
ESTIMATED BY SB			CHECKED BY MC		APPROVED BY WS
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE MAT. & LAB	ESTIMATED AMOUNT

(For the Firm)

EXHIBIT B