

HOUSING & COMMUNITY DEVELOPMENT DIVISION

Memo

7-7-10
M-44

3/14/12

To: Jonda Joseph, City Clerk

From: Jonathan Brown, Housing & Community Development Manager

Date: March 13, 2012

Subject: CDBG-R Small Business Loan Agreement – Betty's Soul Food, Inc. and Rolyat Corporation

Attached please find an executed original copy of the above subject Loan Agreement for your records. One original executed copy has been sent to Betty's Soul Food, Inc. and Rolyat Corporation for their files and our office has the additional original for their project file.

The City Commission approved this loan on July 70, 2010 by M-44.

JB/hmcd/CDBG-Betty'sSoulFood-RolyatCorp.

Attachment

CITY CLERK
2012 MAR 14 PM 2:44

COMMUNITY DEVELOPMENT BLOCK GRANT – RECOVERY
SMALL BUSINESS LOAN AGREEMENT

THIS IS A SMALL BUSINESS LOAN AGREEMENT, entered into this 26TH
day of JANUARY, 2012, between:

THE CITY OF FORT LAUDERDALE, a municipal corporation, organized and existing under the laws of the State of Florida, hereinafter referred to as "City,"

and

BETTY'S SOUL FOOD, INC., a Florida corporation, and
ROLYAT CORPORATION, a Florida corporation, jointly and severally, hereinafter referred to as "Participant".

Pursuant to motion approved by the City Commission at its meeting of July 7, 2010, ("Approval Date"), the City Commission authorized the proper City officials to enter into this agreement ("Agreement").

The City has received a 2009 Community Development Block Grant – Recovery ("CDBG-R") allocation of funds from the U.S. Department of Housing and Urban Development ("HUD") through the American Reinvestment and Recovery Act to provide communities with stimulus dollars for the purpose of creating, retaining, or both, jobs for eligible City residents. The City Commission authorized a portion of the allocation for the CDBG-R Financial Assistance to loan small businesses low or non-interest bearing, forgivable loans to create, improve or expand their businesses thereby creating or retaining jobs subject to certain requirements ("Program"). The City's Housing and Community Development Division ("HCD") is administering the Program on behalf of the City. As used herein "Manager" shall mean the Manager of HCD.

The Participant submitted an application to participate in the Program and was selected to receive CDBG-R funding for the renovation of the property described in Paragraph 1 for the business enterprise described in this Agreement.

Participant represents that it has received, reviewed and understands the existing policies and procedures as outlined under the Program guidelines and agrees that compliance with such guidelines is required in order to participate in the Program.

The City is required to and follows the U.S. Department of Housing and Urban Development Guidelines for determining the eligible and ineligible rehabilitation costs to be funded.

Any and all references to terms of days in this agreement, are to be considered as business days and are defined as Monday through Friday, not including city, state, or federal holidays.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements, and other good and valuable consideration, the receipt of which is acknowledged, the parties agree to and are bound as follows:

1. PURPOSE.

The purpose of this Agreement is to provide the rights, duties and obligations of the City and Participant in order for Participant to borrow and use HUD funds from City, pursuant to the Program. The loan proceeds received by Participant in accordance with this Agreement shall be used solely in connection with the renovation, repair or improvement costs associated with a restaurant (hereinafter "Business") on the Property legally described as follows:

Lots 1, 2, 3, and 4, Block 4, LESS Right of Way as recorded in Official Records Book 4345, Page 485, WASHINGTON PARK, according to the Plat thereof, as recorded in Plat Book 19, Page 22, of the Public Records of Broward County, Florida.

also known as:

601 NW 22nd Road, Fort Lauderdale, FL 33311

hereinafter referred to as "Property."

The above Property is being renovated in order to serve as a restaurant located on the Property for the purpose of creating or retaining jobs. The improvements to be made in connection with the Business located on the Property are described in Exhibit A attached hereto and incorporated herein ("hereinafter referred to as "Project").

2. LOAN TERMS.

- (A) **LOAN AMOUNT.** The principal amount of the loan associated with this Agreement (hereinafter "Loan") shall not exceed **One Hundred Seventy Thousand & 00/100 Dollars (\$170,000.00)**. Loan proceeds will be used to pay for Project expenses as provided in Exhibit "B" attached hereto. The term of the Loan is four (4) years from the Closing Date as defined herein. The closing date is the date this Agreement, promissory note ("Note") and mortgage ("hereinafter Loan Documents") are fully executed by the parties hereto ("Closing Date"). If the Participant is in compliance with the terms of the Loan Documents during the term of the Loan, the principal amount of the Loan shall be forgiven four (4) years after the Closing Date. For purposes of this Agreement, the expenses incurred by Participant for the Project on or after the Approval Date shall be eligible for reimbursement. The term of this Agreement shall commence on the date this Agreement is last executed by both parties and shall terminate on the date a satisfaction of the mortgage described in Paragraph 2 (B) is executed by City and recorded in the Public

Records of Broward County, Florida.

- (B) SECURITY. The Loan shall be secured by a mortgage on the Property and upon all improvements located thereon (hereinafter "Mortgage"). The entire amount of the Loan balance will become due and payable, by Participant, upon a prohibited conversion, sale or use of the Property or other default as described in this Agreement during the term of this Loan.
- (C) CLOSING. The closing on this Loan shall occur no later than thirty (30) working days from the date of execution of this Agreement by both parties. The closing on this Loan shall occur at the principal office of the Manager of HCD, City of Fort Lauderdale, 1409 NW 6th St., Fort Lauderdale, Florida, or such other place as may be agreed upon by the parties.

Prior to closing, the Participant either has provided or will provide to the City a copy of the construction contract with the general contractor or such other contract between Participant and such other provider of services, equipment or materials necessary to complete the Project (hereinafter "Vendor") as described in Exhibit "B"; a description of the procurement method used to secure the construction or Vendor contract, and evidence that all federal, state and local taxes are paid and current. The timely submission of such documents shall constitute a condition precedent to the closing of this transaction. The procurement method must be in accordance with the provisions of Paragraph 5 of this Agreement.

- (D) DISBURSEMENTS. As a ministerial function, the City shall serve in the capacity of a disbursing agent for the Participant. The Loan proceeds made available to the Participant shall be disbursed by the City for costs and fees associated with the Project as provided on Exhibit B.

The CDBG-R Loan funds shall be released by City on either a reimbursement or expense incurred basis. If on a reimbursement basis, payment shall be issued directly to the Participant. If on an expense incurred basis, Participant shall submit invoices for payment due for a service or equipment or materials listed on Exhibit B, and City shall issue payment to both the Participant and the Vendor, requiring the Participant's signature to countersign and release the check for payment(s) to the Vendor. The Participant shall not unreasonably withhold approval of any partial and final payments to the Vendor, subject to the requirements set forth or referred to in the Program requirements.

Participant shall submit monthly invoices to the City no later than the fifteenth day (15th) of each month.

City will withhold twenty percent (20%) of total Loan proceeds as final payment and pay same upon evidence that the Project is complete.

- (E) **INSURANCE COST.** Owner shall be obligated to pay and maintain all insurance required at its own cost, Owner's failure to provide insurance in accordance with this Agreement shall constitute an event of default as provided in this Agreement.

3. PARTICIPANT OBLIGATIONS.

The Participant is subject to the following specific obligations for the entire term of the Mortgage executed as security for the Loan:

- (A) Participant shall commence and complete the Project within 365 days of the Closing Date.
- (B) Within twelve (12) months of the Closing Date, Participant shall have hired person(s) equivalent to one full time job for each \$30,000 of the Loan amount. Based on the maximum Loan amount provided in this Agreement, Participant shall create and make available the equivalent of three (3) full time positions as described on Exhibit "C" of this Agreement ("Positions").
- (C) Participant shall fill the Positions for a minimum of three (3) years. If one or more Positions is not filled or becomes vacant, no default in this Agreement shall occur as a result if Participant provides and the Manager agrees in writing that Participant is making best efforts to fill the Position in accordance with the job descriptions provided in Exhibit "C" and the Position is not filled due to no fault of the Participant.
- (D) At least two (2) of the three (3) Positions must be held by very low, low or moderate-income eligible residents (equivalent to annual household incomes of eighty percent (80%) or less of the area median income, such eligibility to be determined by HCD). A copy of Exhibit D must be completed and submitted for each individual hired into one of the positions created through this activity.
- (E) Current HUD Income Eligibility Guidelines shall be used to determine annual household income.
- (F) Within ninety (90) days of the Closing Date a representative of Participant shall register and attend the Financial Training and Assistance Program being offered by the City in conjunction with the Small Business Loan Program.
- (G) If required pursuant to Florida Statute, within sixty (60) days of the commencement of Project, a Notice of Commencement signed by the Participant shall be recorded (on a date subsequent to recording the Mortgage) and a certified copy thereof posted on the site of the Property in accordance with the Florida Mechanics' Lien Law; The Participant shall provide City with proof of such posting. The City's name and address of its

principal office (elsewhere herein set forth) and proof, acceptable to the City that such Notice of Commencement has been properly posted on the property in accordance with the requirements of Chapter 713 Florida Statutes, shall be delivered to the City.

- (H) Participant agrees that all work and improvements described in Exhibit "B" shall be performed by a contractor duly licensed under the laws of the State of Florida and Broward County or other licensed or certified Vendor as approved by the Manager of HCD.
- (I) Participant further agrees, during the term of this Agreement, that it shall not remove or demolish the Business or any improvements on the Property; to complete or restore promptly and in good and workmanlike manner any area which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished to the Property; and to comply with all laws affecting said Property.

4. GENERAL CONDITIONS.

Participant agrees to comply with the following federal laws and executive orders:

- (A) Title VI of the Civil Rights Act of 1964 (Public Law 88-352). This law states that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- (B) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 ET. SEQ., particularly 42 U.S.C. 6101 ET SEQ., and 29 U.S.C. 794). This section mandates that no person shall, on the grounds of race, color, national origin, sex, age or religion, be excluded from participation, denied the benefits of or otherwise be subject to discrimination under any activity funded in whole or in part by CDBG funds.
- (C) Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701U). This section requires that, to the extent applicable to the Project, Participant must:
 - 1. Ensure that the work to be performed under this Agreement and any Vendor contracts are subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance

for housing.

2. Award contracts for work undertaken in connection with a household rehabilitation (including reduction and abatement of lead based paint hazards), housing construction, or other public construction projects to business concerns that provide economic opportunities for low and very low income persons residing within the metropolitan area in which the funded project is located; and where feasible, priority should be given to business concerns which provide economic opportunities to low and very low income residents within the service area or the neighborhood in which the project is located and to low and very low income participants in other programs.
3. Comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by execution of this Agreement, Participant certifies that it is under no contractual obligation or other impediment that would prevent it from complying with the part 135 regulations.
4. If applicable to the Project, include the following provisions in any Agreement with a contractor or Vendor:
 - a. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
 - b. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
 - c. The contractor will certify that any vacant employment

positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

5. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (D) Section 504 of the Rehabilitation Act of 1973, as amended. This section specifies that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal assistance.
- (E) The Americans with Disabilities Act of 1990. This law prohibits discrimination on the basis of disability in employment, state and local government service and in public accommodations in commercial facilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living and economic self sufficiency for persons with disabilities.
- (F) The Age Discrimination Act of 1975, as amended. This law provides that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal assistance.
- (G) Executive Order 11246 (as amended by Executive Orders 11375 and 12086), equal opportunity under HUD contracts and HUD assisted construction contracts. This order requires that sub recipients, and their contractors and subcontractors agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. These provisions shall apply to this Program.
- (H) All laborers and mechanics employed by contractors or subcontractors on construction work for projects of 8 units or more must be paid "prevailing" wages that have been determined by the Davis Bacon Act (40 U.S.C. 276A-276A-5); the Contract Work, Hours and Safety Standards Act (40 U.S.C. 327 to 333) and the Copeland Anti-Kickback Act (40 U.S.C. 376C), also apply to such activities.
- (I) Conflict of Interest. (24 CFR 570.611; 24 CFR 85.36; and OMB A-110) Except for payment for services provided to employees or individuals of the Participant, such names to be specifically listed and provided to the City at

the time Participant executes this Agreement, no person who is an employee, agent, consultant, officer, or board member of the Participant who exercises or has exercised any functions or responsibilities with respect to the HUD funds to be provided or the activities and services to be performed under this Agreement, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, or a principal by whom such person is retained, is allowed to obtain a financial interest in or benefit from this Agreement or the services or activities to be provided under this Agreement, or have a financial interest in any contract, subcontract or agreement regarding the activities or services described in this Agreement or the proceeds derived from such activities. The activities include, but are not limited to, the purchasing or selling of any real property that has been purchased or sold with all or a portion of HUD funds, either for themselves or any person who is an employee, agent, consultant, officer, or elected or appointed official of the Participant, and to their immediate family members, and business partners, during their tenure or for one year thereafter, subject to the exceptions stated in 24 C.F.R. 570.611 (d) or 24 C.F.R. 92.356 (d), which exceptions require written approval from HUD. Participant shall be required to submit a certificate of compliance with respect to this provision upon the payment by City of HUD funds. This provision is applicable to the procurement of supplies, equipment, construction and services; acquisition and disposition of real property; provision of assistance to individuals, businesses or private entities for all eligible activities (24 CFR 570.201-204) and the provision of loans to individuals, businesses, and other entities.

The term "*immediate family ties*" means an individual who is related to a public officer, public employee, officer, director, person having an equity ownership in the Participant of 5% or more or business associate of a person having an ownership interest in the Participant of 5% or more as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or officer, director, person having an equity ownership in the Participant of 5% or more or business associate described above or who otherwise holds himself or herself out as or is generally known as the person with whom the public officer or public employee or officer, director, person having an equity ownership in the Participant of 5% or more or business associate described above intends to marry or intends to form a household or any other natural person having the same legal residence as the public officer or public employee or officer, director, person having an equity ownership in the Participant of 5% or more or business associate as described above.

- (J) The Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.
- (K) The Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"), when applicable. Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination used by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.
- (L) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333), Sections 102 and 107, as supplemented by Department of Labor regulations (29 CFR Part 5), when applicable. Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (M) 24 CFR Part 70 applies to volunteers.
- (N) E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR Part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

- (O) The Drug-Free Workplace Act of 1988 (42 U.S.C. 701), which requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's regulations provided at 48 CFR Part 23.500, et seq.
- (P) All applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). The Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, if the grant amount is in excess of \$100,000. Violations of these Acts shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

5. PROCUREMENT.

The Participant agrees to adhere to 24 CFR Part 84 with regard to the purchase of all equipment and furnishings. Procurement of all items shall be conducted through open competition that may include price or rate quotations or sealed bids from at least two or more qualified sources or responsive bidders. Sole source procurement shall be used only in instances where items to be purchased are not available through open competition.

6. INSURANCE AND INDEMNIFICATION.

- (A) The Participant will obtain, pay for, and keep in force continuously throughout the term of this Agreement, commercial general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence, and such coverage shall include property damage, bodily injury, and death. This policy shall name the City as an additional insured and will not be affected by any insurance that the City may carry in its own name. The Participant shall provide an original Certificate of Insurance to the City within ten days of execution of this Agreement.
- (B) Participant agrees to obtain and keep in force during the term of the Loan, insurance against loss by fire and windstorm and against such other losses that would be covered by extended coverage, and other perils insurance, and flood insurance as described below. Coverage is to be provided to the extent of the full insurable value in the company or companies with such financial responsibility as found acceptable to the City. The policy or policies shall name the City as an additional insured. The Participant will continue to provide current certificates of all policies to the City. The initial certificates shall be provided to the City prior to the first reimbursement payment request to the City. In the event any such sums of money become payable under such policy or policies, the City shall have the option to receive and apply the same on account of the indebtedness hereby secured, or to permit the

Participant to receive and use such sums, or any part thereof, for other purposes, without thereby waiving or impairing any equity, lien, right by virtue of this Agreement. Should the Participant fail to keep said improvements so insured or should the Participant fail to pay any premium becoming due on any such policy or policies on or before the due date thereof, the City may place and/or pay for such insurance or any part thereof without waiving or affecting its option to foreclose or any right hereunder, and each and every such payment shall become due and payable by the Participant and bear interest at the legal rate.

- (C) These policies shall provide for notice to the City of any claims made under said policies and for at least ten (10) days written notice to the City prior to any change in the policy or coverage afforded thereby, cancellation for any reason, or payment of any claims to any persons.
- (D) It is agreed by and between the City and Participant that Participant shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents, from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from the Participant's acts or omissions in performing their obligations under this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement or any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, are included in the indemnity. The Participant further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false or fraudulent.

7. AGREEMENT CANCELLATION.

In the event of Agreement cancellation or any other Event of Default, the entire unpaid principal amount remaining on the Loan shall become immediately due and payable, without notice or demand, and interest at the highest rate permissible by law, unless otherwise lowered by City, shall begin to accrue thereon after thirty (30) calendar days from the date of cancellation or default, as established by the City.

8. FURNISHINGS / EQUIPMENT / SUPPLIES

- (A) The Participant agrees that any equipment, furnishings, and supplies purchased with funds obtained through this Agreement, shall be continuously well-maintained and kept in good condition and repair during their useful life.

All of these equipment, furnishings, and supplies shall be kept in a secure location to prevent loss, damage, or theft. All equipment and furnishings acquired by the Participant using the Loan funds shall become the property of the City upon the dissolution of Participant or upon Participant's failure to comply with and participate in the Program.

- (B) Participant agrees to maintain property records that include a description of the equipment and furnishings purchased with Loan funds, listing the location and general condition of said property, and a serial or other identification number. Such records shall also include the source of the property, which holds title, the acquisition date, the cost of the property, and the percentage of federal participation in the cost of the property. Such records shall be provided to the City on an annual basis throughout the term of this Agreement.
- (C) The Participant agrees that all equipment and furnishings purchased with funds obtained through this Agreement shall be subject to a physical inventory. The results of said inventory must be reconciled with any existing property records on an annual basis.
- (D) Participant agrees that the items of equipment, supplies, and furnishings obtained as a result of this Agreement shall not be sold, transferred, or otherwise disposed of, without the written consent of the City.
- (E) Participant agrees when property is no longer needed and it cannot be used to assist homeless or low-income persons, if the value of the property is less than \$5,000, Participant may dispose of the property and retain the proceeds as miscellaneous revenue. The Participant must properly document its cost evaluation process for all items valued at less than \$5,000. The documentation must be kept on hand and provided to the City upon completion of the disposition process.
- (F) When property is no longer needed and it cannot be used to assist homeless or low-income persons, if the value of the property is more than \$5,000, disposition instructions should be requested from the City. If the City does not provide instruction within one hundred twenty (120) days or has no use for the property, the Participant may dispose of the property provided the fund account is reimbursed by applying to the sales price or fair market value of the property an amount equal to the percentage of the original acquisition price of the property.

9. EVENTS OF DEFAULT.

The following events shall constitute an "Event of Default" pursuant to this Agreement:

- (A) An Event of Default, as defined in the Mortgage or any other security

instrument associated with this Agreement.

- (B) If the Project on the Property is not commenced and completed within the time provided in Paragraph 3.A. of this Agreement. The use of unacceptable construction elements and raw materials, as determined by HCD, or if work is substantially discontinued without cause as determined by HCD for a period of fifteen (15) days or more.
- (C) If the Positions are not filled within the time and in accordance with Paragraph 3. B. of this Agreement.
- (D) If the Project or its implementation violate any ordinance, regulation, rule or direction of any federal or state agency, or any governmental or quasi governmental authority, or any zoning regulations; or any building permit is revoked or suspended or shall lapse; or if the Participant fails to satisfy in a timely manner the conditions of any permit or license which is conditional in nature so as to prevent its validity.
- (E) The Participant fails to perform any covenant or term or condition of this Agreement; or any representation or warranty of the Participant herein or in any other Loan document executed concurrently herewith or made subsequent hereto shall be found to be inaccurate, untrue or breached; or shall fail to timely perform all terms and conditions for disbursement.
- (F) If the Participant or any endorser of the Note files a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent or shall file any petition or answer seeking a reorganization arrangement, composition readjustment, liquidation, wage earners plan, assignment for the benefit of creditors, receivership dissolution or similar relief under any present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other local law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Participant or all or any part of the Property of Participant or endorser of the Note; or if within ten (10) days after commencement of any proceeding against the Participant or endorser of the Note, seeking any reorganization arrangement, composition readjustment, liquidation, dissolution, debtor relief, or similar relief under any present or future Federal Bankruptcy Act or any other present or future federal, state, or other local law, such proceedings shall not have been dismissed or stayed on appeal; or if, within ten (10) days after the appointment, without the consent or acquiescence of the Participant or any endorser of the Note or any trustee, receiver or liquidator of the Participant or any endorser of the Note, or of all or any portion of the Property, such appointment shall have been vacated or stayed on appeal or otherwise; or if within ten (10) days after the expiration of such stay, such appointment shall not have been vacated.
- (G) A sale, lease, conveyance or other transfer of the Property, Business or both

within the term of the Mortgage securing the Loan unless the a new owner, lessee or other transferee has been approved by the Manager in writing as an eligible participant and has executed agreements accepting and assuming all of the rights and responsibilities of the Participant as provided in the Loan Documents.

- (H) The breach, violation or failure to perform any of the obligations of the Participant or any of the covenants and conditions contained in any of the Loan documents executed simultaneously herewith.

Upon the occurrence of any Event of Default, the City shall cease making disbursements hereunder and, if Participant shall have failed to cure such default within any applicable cure period as may here and above be provided may:

1. Declare immediately due and payable, all monies advanced hereunder and accordingly, accelerate payment of the Note, and at City option, commence a foreclosure of the Mortgage or take any other action permitted thereby or appropriate by law.
2. Enter upon the Property and take possession thereof together with the improvements rehabilitated, constructed or being rehabilitated thereon, all books, records, files, correspondence and other material of the Participant related to the Property, the plans and specifications, shop drawings, and materials, supplies, tools, equipment and construction facilities and appliances located thereon or stored off site in connection with the Property and proceed, either in the name of the City or in the name of the Participant (as the latter's attorney in fact, which authority is coupled with an interest and is irrevocable by the Participant), as the City shall elect to complete or cause to be completed, the rehabilitation at the cost and expense of the Participant. If the City so completes, it may do so according to the terms of this Loan, or according to such changes, alterations, or modifications in the construction as the City shall deem expedient or necessary and the City may enforce or cancel all contracts which in the opinion of City may deem advisable and the Participant shall be liable under the Loan Agreement, under the Note and the Mortgage, to pay the City any amount or amounts expended by the City for such performance, together with any costs, charges or incident thereto or otherwise incurred or expended by the City on behalf of the Participant in connection with the completion of the construction. A statement of such expenditures, verified by the affidavit of an officer of the City, shall be prima facie evidence of the amounts so expended and of the necessity for such expenditures, and the burden of proving to the contrary shall be upon the Participant. The City shall have the right to apply any funds agreed to be advanced hereunder to bring about the completion of the rehabilitation and to pay the cost thereof, and if such money so agreed to be an advance are insufficient, the

Participant agrees to deliver and pay to the City such sums of money as the City may from time to time demand for the purpose of completing the rehabilitation or of paying any liability, charge or expense time, demand for which may have been incurred or assumed by the City under or in connection with the performance of this Agreement.

- (I) The remedies herein provided for shall be in addition to and not a substitution for the rights and remedies which would otherwise be vested in the City in law or equity under the Note or the Mortgage and any other Loan documents all of which rights and remedies are specifically reserved by the City, any failure by the City to exercise the remedies herein provided shall not precluded the resort to any other remedy or remedies of damages or otherwise in the event of a breach of any of the undertakings of the Participant hereunder. No delay or omission by the City in exercising any rights or remedy occurring upon the happening of an Event of Default shall impair any such right or remedy or shall be construed as a waiver of any such default; and every right and remedy hereby conferred upon the City may be exercised from time to time and as often as shall be deemed expedient by the City. No waiver of any impending default shall extend to or affect any other Event of Default.

10. ASSUMPTION.

Neither the Loan, nor this Agreement is assumable except as provided in Paragraph 9.(F) of this Agreement. Any disbursed funds are immediately due upon the sale, lease or transfer of the Business or Property.

11. FUTURE SUBORDINATION.

This Agreement and the Mortgage and Note securing the Loan made to the Participant may be subordinated in favor of a lending institution for the purpose of refinancing the existing superior mortgage debt or obtaining new mortgage debt on the Property. Participant shall submit to City a written request to subordinate with supporting documents including, but not limited to, the identity of the lending institution and its proposed subordination agreement, the amount and interest rate of the new or refinanced mortgage, and an explanation describing the reasons the Participant is refinancing or obtaining a new mortgage. The City's Housing and Community Development Manager shall recommend to the City Manager whether to approve the City subordinating its Mortgage. The recommendation shall be based on whether subordination is in the best interest of the Participant and the City. Unless other circumstances warrant it, subordination will generally be approved if:

- (A) At least four (4) months have elapsed from the date of closing on the Loan that was obtained in accordance with this Agreement.
- (B) At least two (2) years have elapsed from the date of the last subordination, if

applicable.

- (C) If a refinance of existing mortgage debt is involved, the new mortgage Note is at an interest rate equal to or more than two percentage points lower than the interest rate on the existing mortgage debt and, if there is cash taken out by the Participant at closing, fifty-one percent (51%) or more of that cash will be used to improve the Property.
- (D) In no event will a subordination other than that described in 9.(A) be approved if the ratio of the new proposed total mortgage debt to the value of the Property, at time of the subordination request, exceeds 80%. The HCD Manager shall have the authority to enter into a subordination agreement on behalf of the City.

12. PROPERTY MANAGEMENT AND MAINTENANCE.

Participant agrees that the Property shall, after the Project is complete, be continuously well-maintained and kept in standard condition and repair during the term of the Loan.

13. RECORDS.

Records pertaining to this Agreement shall be maintained by the Participant and made available, in Broward County, Florida, for the duration of the Agreement and retained for a period of three (3) years beyond the last day of the Agreement term. If any litigation, claim, negotiation, audit or other action involving the records commences before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which may arise from it, or until the end of the regular 3-year period, whichever is later.

14. RIGHT TO AUDIT.

The Participant shall maintain adequate records to justify all charges, expenses and costs incurred for completion of the improvements for at three (3) years after completion of the Project. . The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Participant's place of business.

15. MONTHLY/ANNUAL REPORT.

In the first year of this Loan, the Participant shall provide a monthly status report that contains the progress made to complete the Project, the status of filling the Positions, the total funds expended at the time of the report and the funds anticipated to be used in the following month. The report will include an updated timeline for the completion of construction and employment of eligible residents. In addition to the monthly report, Participant shall provide a copy printed from the EPLS website at <https://www.epls.gov> showing that Participant checked the website

to determine if any contractor or Vendor is debarred, suspended or otherwise excluded and declared ineligible as provided in Paragraph 4.(N) of this Agreement. Further, the Participant shall provide an Annual Report to HCD no later than thirty (30) days following the end of a City' fiscal year during the term of this Agreement. The Annual Report format and spreadsheet shall be provided to Participant. In addition to the Annual Report, the Participant shall provide HCD with a detailed progress report of the retained and created jobs that are filled or vacant and not occupied by income eligible applicants. An Annual Report must be submitted each year for the entire Loan term.

16. FINANCIAL STATEMENTS TO BE FURNISHED.

Participant shall furnish to the City upon the City's request, but no more than once a year, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Participant and, at the request of the City, certified (in form satisfactory to the City) by an independent certified public accountant acceptable to the City; and promptly, from time to time, but no more than once a year, such other information regarding the operations, business, affairs and financial condition of Participant as the City may reasonably request.

17. INSPECTIONS.

Participant will permit City, or its representatives to enter upon the Property, inspecting the Project and all materials to be used in the construction thereof, and to examine all details, plans and shop drawings which are kept at the Property, and will cooperate, and cause Participant's contractor and vendors to cooperate with the City's representative.

18. NOTICE.

Any notice by either party under this Agreement shall be deemed sufficient if given in writing and hand delivered, and receipted for or sent by registered or certified mail postage prepaid and return receipt requested to the appropriate parties indicated below:

As to the City

Jonathan Brown, Manager
Housing and Community Development Division
Planning & Zoning Department
City of Fort Lauderdale
P.O .Box 14250
Fort Lauderdale, Florida 33302-4250

As to the Participant:

**Betty Taylor, Director
BETTY'S SOUL FOOD, INC.
601 NW 22nd Road
Fort Lauderdale, Florida 33311**

**Betty Taylor, President
ROLYAT CORPORATION
601 NW 22nd Road
Fort Lauderdale, Florida 33311**

19. SEVERABILITY.

If any section, subsection, clause, sentence, or provision of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall not be affected thereby.

20. INTEGRATION.

This Agreement and Exhibits or Attachments specifically referenced herein, shall constitute the entire agreement between the City and Participant. No prior written, prior or contemporaneous oral promises or representations shall be binding. This Agreement shall not be amended, except by written instrument signed by both parties.

21. GOVERNING LAWS.

This Agreement shall be governed by the laws of the State of Florida, with venue lying in Broward County, for the purpose of any litigation that may arise herefrom.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

Heleen McDonald

HELEEN McDONALD
[Witness type/print name]

CITY OF FORT LAUDERDALE

By: *Jonathan Brown*

Jonathan Brown, Manager, Housing
& Community Development Division

WITNESSES:

Glenda Jones
Signature

Glenda Jones
[Witness-Type/Print Name]

Amanda Charlton
Signature

Amanda Charlton
[Witness-Type/Print Name]

PARTICIPANT(S):

BETTY'S SOUL FOOD, INC.

By: *Betty Taylor*

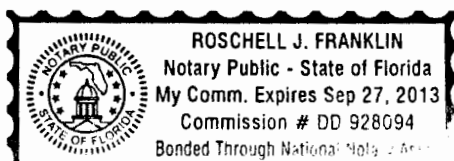
Betty Taylor, President
Type/Print Name and Title

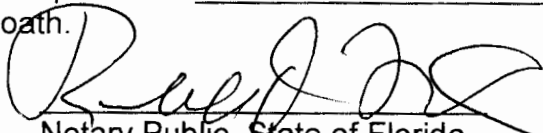
(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 26 day of Jan, 2012, by BETTY TAYLOR, an individual who is personally known to me or has produced _____ as identification and who did/did not take an oath.

(NOTARY SEAL)




Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

WITNESSES:

Roschell Franklin
Signature

ROSCHELL FRANKLIN
[Witness-Type/Print Name]

Betsy K. Pearson
Signature

Betsy K. Pearson
[Witness-Type/Print Name]

PARTICIPANT(S):

ROLYAT CORPORATION

By: Betty Taylor Pres.

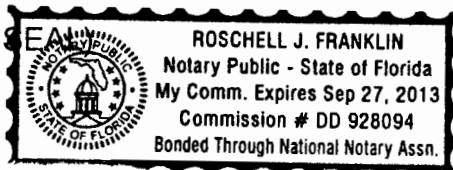
Betty Taylor, President
Type/Print Name and Title

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 26 day of JAN, 2012, by BETTY TAYLOR, an individual who is personally known to me or has produced _____ as identification and who did/did not take an oath.

(NOTARY)



Roschell Franklin
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Approved as to form:

Sharon P. Miller
City Attorney

Executive Summary

Rolyat Corporation d/b/a Betty's Soul Food Restaurant's (to be referred to as Betty's Soul Food Restaurant for the duration of this document), is a privately held for profit corporation that is located on historic Sistrunk Blvd in the Midtown Business Association district of Fort Lauderdale: 601 N W 22nd Road, Ft. Lauderdale, FL 33311.

Betty's Soul Food Restaurant has been in business for thirty five (35) years and is a registered corporation with the Florida Department of State to do business in the State of Florida and is located in the city limits of the City of Fort Lauderdale.

Betty's Soul Food Restaurant is requesting funds in the form of a grant or forgivable loan for the amount of \$170,000. The funds will be utilized for Special Economic Development Activities and job creation/retention as defined in the CDBG Regulations (to be referred to as the CDBG-R for the duration of this document) at 24 CFR 570.

The Purpose & Vision

- The purpose and vision for the request of CDBG-R funds is to upgrade much needed restaurant equipment and repair/replace the roof of Bettys Soul Food Restaurant so that the company can sustain and expand.
- To provide employment for prospective, qualified candidates and to retain current full time employees that meet the job descriptions of said restaurant positions.
- With the assistance of the requested funds, Bettys Soul Food Restaurant will be able to help create, expand and retain employees.
- If needed funding is not obtained, Bettys Soul Food Restaurant may not be able to sustain itself and may be forced to close down after thirty-five y (35) years of being in business.
- To expand to other locations and duplicate the above job expansion and retention plan, creating a local stimulus program in the Broward County area.

BETTY'S SOUL FOOD RESTAURANT
EQUIPMENT UPGRADE PROJECT
01/25/2012

Project Description/Budget/Priority

This project includes the renovation of the kitchen, equipment upgrades and replacement of the countertop in the dining room of an existing restaurant facility. Included in the renovation are:

Priority One: Equipment and Electrical Upgrade/Roofing System/Carpentry

Kitchen/Electrical Upgrades **\$126,000**

- Equipment upgrade/replacement: Replacement of stove, grill and fryer which will allow Betty's to increase capacity for catering services.
- Upgrade of Fire Suppression System
- Carpentry for kitchen walls/kitchen counter tops, cabinetry, drawers or shelving to accommodate new equipment
- Electrical service upgrades: install 225 amp services; new panel box; smoke detectors pulling new wiring; replacement of receptacles in support of new kitchen equipment.
- Plumbing upgrades: to support new equipment
- Installation of new freezer to upgrade food storage capacity

Roof Replacement **\$ 18,000**

Priority Two: Flooring & Door **\$ 5,000**

- Flooring: purchase and installation of commercial grade ceramic tile
- Purchase and installation of new kitchen exit door.

Priority Three: Dining Room Countertops **\$ 3,000**

- Counter tops: Replacement of existing countertops and stools in the dining room to accommodate six (6) patrons.

Architectural, Engineering, Surveys, Permits & Fees **\$ 15,000**

Contingency Fund (10%) **\$ 3,000**

☐ Unknown structural or other issues

TOTAL PROJECT COSTS **\$170,000**

REVISED PROJECT TIMELINE
(01/25/2012)

Project Schedule

| <u>Event</u> | <u>Proposed Date(s)</u> |
|-----------------------------------------|--------------------------------|
| Bid Notices Mailed | February 15, 2012 |
| Notice: Request for Bids (Sun Sentinel) | February 19, 2012 |
| PreBid Conference/Project Inspection | February 24, 2012 |
| Bid Submission Deadline | March 19, 2012 (2:00 p.m.) |
| Bid Opening | March 19, 2012 |
| Notice of Bid Award | March 20, 2012 |
| Permit Process/Issuance | March 23 – April 13, 2012 |
| Construction Begins | April 16, 2012 |
| Davis-Bacon Compliance | April 16 – August 30, 2012 |
| Construction Ends | August 30, 2012 |

List of all Jobs to be Created

EXHIBIT #2

*USE ADDITIONAL SHEETS IF NECESSARY

| Job Title | # | Brief Job Description | Annual Average Salary | Industry Average Salary | Experience/Education/Skills Required |
|-------------------|---|----------------------------------|-------------------------|-------------------------|--------------------------------------|
| COOK | 1 | PREPARE, COOK & SERVE THE LINE | \$24,960. ⁰⁰ | \$20,000. ⁰⁰ | HIGH SCHOOL / GED w/ VALID DL |
| WAITRESS | 1 | WAIT TABLES | \$20,000. ⁰⁰ | 20,000. ⁰⁰ | " " |
| CASHER / WAITRESS | 1 | WAIT TABLES, CHECK OUT CUSTOMERS | \$20,000. ⁰⁰ | 20,000. ⁰⁰ | " " |
| DISH WASHER | 1 | CLEAN TABLES WASH & STOCK DISHES | \$20,000. ⁰⁰ | 20,000. ⁰⁰ | " " |
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Community Development Block Grant-Recovery (CDBG-r)

Job Creation Report

| Name / Employee Number | Hire Date | Job Title | Starting Salary | Home Address |
|------------------------|-----------|-----------|-----------------|--------------|
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